रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

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सं. 38] नई दिल्ली, दिसम्बर 18—दिसम्बर 24, 2016, शनिवार/अग्रहायण 27—पौष 3, 1938
No. 38] NEW DELHI, DECEMBER 18—DECEMBER 24, 2016, SATURDAY/AGRAHAYANA 27— PAUSA 3, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 14 दिसम्बर, 2016

आ.अ.84.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116(ग) और धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, वर्ष 2016 की सिविल याचिका सं. 2649 और 2829 में, भारत के माननीय उच्चतम न्यायालय के दिनांक 28 अक्तूबर, 2016 के निर्णय / आदेश और वर्ष 2012 की निर्वाचन याचिका सं. 1 में, दिनांक 29 फरवरी, 2016 के मणिपुर उच्च न्यायालय के निर्णय / आदेश को एतद्वारा प्रकाशित करता है।

(वर्ष 2016 की सिविल याचिका सं. 2649 एवं 2829 में, भारत के माननीय उच्चतम न्यायालय के दिनांक 28.10.2016 के संलग्न निर्णय / आदेश अधिसूचना के अंग्रेजी भाग में छपा है ।)

(वर्ष 2012 की निर्वाचन याचिका सं. 1 में मणिपुर उच्च न्यायालय के दिनांक 29.02.2016 के संलग्न निर्णय / आदेश अधिसूचना के अंग्रेजी भाग में छपा है ।)

[सं. 82/मणिपुर-विधान सभा/2016]

आदेश से,

स्टेण्डहोप युहलुंग, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 14th December, 2016

O.N. 84.—In pursuance of Section 116(c) and Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India, hereby, publishes the judgement/order of the Supreme Court of India dated 28th October,2016 in Civil Appeal No.2649 & 2829 of 2016 and the judgement/order of High Court of Manipur dated 29th February, 2016 in the Election Petition No. 1 of 2012.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2649 of 2016

SRI MAIREMBAM PRITHVIRAJ @ PRITHVIRAJ SINGH .... Appellant(s)

Versus

SHRI PUKHREM SHARATCHANDRA SINGH ….Respondent(s)

With

CIVIL APPEAL No. 2829 of 2016

PUKHREM SHARATCHANDRA SINGH .... Appellant(s)

Versus

SRI MAIREMBAM PRITHVIRAJ @ PRITHVIRAJ SINGH
….Respondent(s)

JUDGMENT

L. NAGESWARA RAO, J.

CIVIL APPEAL No. 2649 of 2016

The Appellant has filed this appeal aggrieved by the judgment of the High Court of Manipur at Imphal by which his election to the Manipur Legislative Assembly from Moirang Assembly constituency was declared as void.

2. A Notification was issued for election to the 10th Manipur Legislative Assembly on 04.01.2012. The Appellant belonging to the Nationalist Congress Party (NCP) and the Respondent who was sponsored by the Indian National Congress (INC) filed their nominations within the time prescribed. There was no other nominationfiled.The Respondent objected to the nomination of the Appellant at the time of scrutiny on the ground that a false declaration relating to educational qualification was made by the Appellant. The Returning Officer directed the Appellant to submit documents in proof of his educational qualification as declared in the affidavit filed under Form 26. The Appellant failed to produce any document to prove his educational qualification in spite of which the Returning Officer accepted the nomination of the Appellant. Polling took place on 28.01.2012 and the counting of votes was held on 06.03.2012. The result was declared on the same day. The Appellant secured 14,521 votes and the Respondent secured 13,363 votes. The Appellant was declared elected as MLA, Moirang Constituency.

3. The Respondent challenged the election of the Appellant by filing an election petition in the Guwahati High Court seeking a declaration that the Appellant's election was null and void, that the Respondent should be declared as duly elected and that a criminal proceeding should be directed to be initiated against the Appellant under Section 125-A and 127 of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act'). Apart from the ground of improper acceptance of nomination, the Respondent also alleged corrupt practices against the Appellant.

4. The Appellant denied the allegation of false declaration. According to the Appellant, the declaration made by him that he passed Master of Business Administration (MBA) in 2004 from Mysore University was a clerical error. The Respondent abandoned the allegation of corrupt practices and other electoral malpractices during the trial of the election petition in the High Court. The High Court framed six issues which are as follows:

(i) "Whether the Returning Officer of 27th Moirang AC has illegally accepted the nomination paper of the respondent or not?

(ii) Whether the election of the respondent had been materially affected by the acceptance of the nomination paper of the respondent by the R.O. of 27th Moirang A/C or not?

(iii) Whether the respondent had filed false affidavit in respect of the highest education qualification in the Form, in which the respondent had mentioned "MBA Mysore University" or whether it was merely a clerical error?

(iv) Whether the petition lacks material facts or not?

(v) Whether the election petition is liable to be dismissed for not putting the words "attested to be true copy of the petition" on each and every page of the petition by the petitioner himself or not; or on any of the defects raised by the respondent in his written statement?

(vi) Whether the petitioner is entitled to the relief claimed in the writ petition?"

5. Issue No. 5 pertains to attestation of the petition not being made properly. The objection raised by the Appellant to the maintainability of the election petition was that only the front page of the election petition had the words "Attested to be true copy." Issue No. 5 was answered in favour of the Respondent. The High Court considered the main controversy pertaining to the filing of false affidavit regarding the educational qualification by the Appellant in a detailed manner. There is no doubt that the Appellant filed Form 26 in which he mentioned his educational qualification as MBA from Mysore University in 2004. After careful consideration of the material on record and various judgments cited by the parties, the High Court concluded that the declaration made by the Appellant in Form 26 about his educational qualification as MBA from Mysore University was false. The plea of the Appellant that the defect in Form 26 was due to a clerical error was rejected. The contention of the Appellant that providing wrong information about the educational qualification was not a defect of substantial character was also rejected. The Appellant contended that the Respondent failed to plead and prove that the result was 'materially affected' as required under Section 100 (1) (d) of the Act. The High Court did not accept the said contention on the ground that there were only two candidates in the fray in which case it was not necessary to prove that the result of election of the returned candidate was materially affected. The High Court further held if it is found that the Appellant's nomination was improperly accepted, the result of his election stood automatically affected materially. The High Court on the basis of the above reasons declared the election of the Appellant as void. The Appellant has filed this appeal challenging the same.

6. We have heard Mr. V. Giri, learned Senior Counsel for the Appellant and Ms. Meenakshi Arora, learned Senior Counsel for the Respondent. Mr. Giri submitted that the declaration pertaining to the educational qualification of the Appellant was merely a clerical error and cannot be termed as a false declaration. In any event, the declaration of educational qualification is not a defect of substantial nature warranting rejection of his nomination. Mr. Giri also submitted that the election petition was filed under Section 100 (1) (d) (i) and (iv) of the Act. He stated that there is neither pleading nor proof in the election petition that the improper acceptance of the Appellant's nomination had materially affected the result. According to Mr. Giri, the Appellant's election cannot be set aside on the ground of improper acceptance of his nomination without the requirement of Section 100 (1) (d) of the Act being satisfied. He referred to **Durai Muthuswami v. N. Nachiappan and Ors. reported in 1973 (2) SCC 45** and submitted that the said judgment should be restricted to the facts of that case. He also attempted to distinguish the said judgment as not applicable to the facts of this case by submitting that it was a case of disqualification under Section 9-A of the Act. He further submitted that the said case was one filed under Section 100 (1) (a) of the Act. He contended that there is no need for pleading or proving that the result was materially affected if the election is challenged under Section 100 (1) (a) to (c) whereas it is compulsory in a petition filed under Section 100 (1) (d).

7. Ms. Meenakshi Arora, learned Senior Counsel, argued that the Respondent pleaded in the election petition that the result of the election was materially affected by the improper acceptance of the nomination of the Appellant. She took us through the pleadings and evidence, both oral and documentary, to contend that the declaration of educational qualification by the Appellant was not a mistake. She submitted that the same declaration was made by the Appellant even when he contested the earlier election to the Legislative Assembly in 2008. She also highlighted the contradictory stands relating to the declaration taken by the Appellant. She submitted that it was not necessary to show that the result of the election was materially affected when there were only two contesting candidates for one seat. She relied upon the judgment in Durai Muthuswami (supra) which according to her, was approved in **Jagjit Singh v. Dharam Pal Singh, reported in 1995 Supp (1) SCC 422**. She further relied upon **Union of India v. Association for Democratic Reforms, reported in 2002 (5) SCC294, People's Union for Civil Liberties (PUCL) v. Union of India, reported in 2003 (4) SCC 399, Kisan Shankar Kathore v. Arun Dattatray Sawantc reported in 2014 (14) SCC 162 and Resurgence India v. Election Commission of India and Anr. reported in 2014 (14) SCC 189** in support of hersubmission that a voter has a right to know about theeducational qualification of the candidate and any false or mis-declaration wouldresult in rejection of the nomination of the candidate. Ms. Meenakshi Aroraalso cited Hari Krishna Lal v. Babu Lal Marandi reported in 2003 (8) SCC613 to contend that the false declaration relating to the educational qualification of a candidate is a defect of substantial character.

8. Two issues fall for our consideration in this appeal which are:

(a) Whether a false declaration relating to the educational qualification is adefect of substantial character warranting rejection of a nomination?

(b) Whether it is necessary to plead and prove that the result was materiallyaffected when the nomination of the returned candidate was found to havebeen improperly accepted, moreso, when there are only two candidates contesting the election?

9. Chapter I of Part V of the Act deals with the nomination of candidates. Section 33 of the Act provides for presentation of nomination paper andrequirements of a valid nomination. A nomination paper complete in theprescribed form, signed by a candidate and by an elector of theconstituency as proposer should be delivered to the Returning Officerwithin the prescribed period. Section 33-A which was inserted by Act 72of 2002 with effect from 24.08.2002 contemplates that a candidate has to provide additional information, apart from the information provided by him under Section 33 (1). The information mentioned in Section 33-A relates to the criminal antecedents of a candidate. Section 36 deals with scrutiny of nomination. Section 36(4) which is relevant for adjudication of this case is as follows:

"36. Scrutiny of nomination. – (4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

10. Rule 4 (A) of the Conduct of Election Rules, 1961 which was inserted with effect from 03.09.2002 reads as under:

> "[4A. **Form of affidavit to be filed at the time of delivering nomination paper.**—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.]"

11. A candidate has to file an affidavit along with his nomination paper as prescribed in Form 26 in which one of the columns pertains to the educational qualification. Grounds for declaring the election to be void are provided in Section 100 of the Act which is as under:

"100. Grounds for declaring election to be void.—

[(1) Subject to the provisions of sub-section (2) if 3 [the High Court] is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act 9 [or the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate 1 [by an agent other than his election agent], or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

[the High Court] shall declare the election of the returned candidate to be void.]

[(2)] If in the opinion of 2 [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice 4 *** but 2 [the High Court] is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and 5 [without the consent], of the candidate or his election agent;

6 * * * * *

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt 7 *** practices at the election; and

(d) that in all other respects the election was free from any corrupt 7 *** practice on the part of the candidate or any of his agents,

then 2 [the High Court] may decide that the election of the returned candidate is not void."

12. Section 125-A prescribes penalty for filing false affidavit which is reproduced as under:

"[**125A. Penalty for filing false affidavit, etc.—**

A candidate who himself or through his proposer, with intent to be elected in an election,—

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub- section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]"

13. Sir Winston Churchill underlining the importance of a voter in a democratic form of Government stated as follows:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

14. In Union of India v. Association for Democratic Reforms (supra) this Court held that the voter has a fundamental right to information about the contesting candidates. The voter has the choice to decide whether he should cast a vote in favour of a person involved in a criminal case. He also has a right to decide whether holding of an educational qualification or holding of property is relevant for electing a person to be his representative. Pursuant to the judgment in Union of India v. Association for Democratic Reforms (supra) Section 33-A was inserted in the Representation of the People Act providing for right to additional information by an Ordinance. The challenge to the said Ordinance was dealt with by this Court in People's Union for Civil Liberties (PUCL) v. Union of India (supra) in which it was held as follows:

"78. What emerges from the above discussion can be summarised thus:

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures."

15. It is relevant to mention that the Election Commission of India issued a press note on 28.06.2002 in which there was a reference to the judgment of this Court in Union of India v. Association for Democratic Reforms in which it was held that information on five aspects has to be provided to the voter. One of the five aspects pertains to the educational qualification of the candidates. An order was issued by the Election Commission of India on 28.06.2002 directing that full and complete information relating to the five aspects which were mentioned in the judgment has to be furnished. Providing incomplete information or suppression of material information on any of the five aspects was to be treated as a defect of substantial character by the Returning Officers.

16. In Resurgence India v. Election Commission of India and Anr. (supra) this Court held that every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualification. The fundamental right under Article 19 (1) (a) of the voter was reiterated in the said judgment and it was held that filing of affidavit with blank particulars would render the affidavit as nugatory. In **Kisan Shankar Kathore v. Arun Dattatray Sawant reported in 2014 (14) SCC page 162** this Court considered the question as to whether it was incumbent upon the Appellant to have disclose the information sought for in the nomination form and whether the non- disclosure thereof render the nomination invalid and void. It was held that non-furnishing of the required information would amount to suppression/non-disclosure.

17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the Appellant did not study MBA in the Mysore University. It is the case of the Appellant that reference

to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination. Section 36 (4) of the Act mandates that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial character. The declaration made by the Appellant in Form 26, filed in 2012 is not a clerical error as contended by him. The Appellant contested election to the same constituency in 2008 and in the affidavit filed by him in Form 26 he declared that he passed MBA from Mysore University in 2004. In the affidavit filed by him in this election petition by way of examination-in-chief, the Appellant stated that his nomination paper and the enclosed affidavit were prepared and filed by his counsel Chakpam Bimolchandra Singh on the instructions of his agent Ph. Shamu Singh. He also stated that his counsel filled the prescribed affidavit in his own hand-writing. The Appellant also stated that he signed the affidavit without reading the contents and he came to know about the error only when the Respondent raised his objection to the nomination. The Appellant further stated that he was working in Projeon, Infosys Company and IBM till 2007 and because of his job many local friends and elders thought that he was an MBA degree-holder. His election agent also thought that he was holding an MBA degree due to which he instructed the Advocate Chakpam Bimolchandra Singh to fill up column 9 of the affidavit by stating that the Appellant is an MBA degree-holder. In his cross-examination, the Appellant gave evasive replies to the questions relating to his educational qualification. He stated that he does not remember whether he had undergone MBA from Mysore University and he does not remember whether he possesses MBA degree. Chakpam Bimolchandra Singh who was examined as DW-3 in his cross-examination denied having filled up the entries in Form 26. He stated that he entered the educational qualifications of the Appellant on the basis of instructions given by the election agent Shamu Singh. He also stated that he was not present before the Oath Commissioner when the Appellant signed the affidavit.

18. The contention of the Appellant that the declaration relating to his educational qualification in the affidavit is a clerical error cannot be accepted. It is not an error committed once. Since 2008, the Appellant was making the statement that he has an MBA degree. The information provided by him in the affidavit filed in Form 26 would amount to a false declaration. The said false declaration cannot be said to be a defect which is not substantial. He was given an opportunity by the Returning Officer to produce the relevant document in support of his declaration. At least at that point of time he should have informed the Returning Officer that an error crept into the declaration. He did not do so. The false declaration relating to his educational qualification cannot be stated to be not of a substantial character. It is no more res integra that every candidate has to disclose his educational qualification to subserve the right to information of the voter. Having made a false declaration relating to his educational qualification, the Appellant cannot be permitted to contend that the declaration is not of a substantial character. For the reasons stated supra, we uphold the findings recorded by the High Court that the false declaration relating to the educational qualification made by the Appellant is substantial in nature.

19. Having answered the first question against the Appellant, we proceed now to deal with the next point. Section 100 (1) (a) to (c) deals with disqualification, corrupt practices and improper rejection of nominations respectively which are grounds for setting aside the election. The sine qua non for setting aside an election under Section 100 (1) (d) is that the result of the election, in so far as it concerns a returned candidate, has been materially affected. The contention of Mr. Giri, learned Senior Counsel for the Appellant is that even if it is held that the nomination of the appellant was improperly accepted, his election cannot be set aside in the absence of any pleading or proof that the result was materially affected by the improper acceptance of the nomination. He relied upon **Magani Lal Mandal v. Bishnu Deo Bhandari, reported in 2012 (3) SCC page 314** to contend that every defect cannot be a ground for setting aside an election under Section 100 (1) (d) without further proof that it had materially affected the result of the returned candidate. He also referred to **Shambhu Prasad Sharma v. Charandas Mahant and Ors. reported in 2012 (11) SCC page 390** in which it was held as follows:

> "20. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate."

20. There is no dispute that an election cannot be set aside on the ground of improper acceptance of any nomination without a pleading and proof that the result of the returned candidate was materially affected. The point to be considered is whether the law as laid down by this Court relating to the pleading and proof of the fact of the result of the returned candidate being materially affected applies to a case where the nomination of the returned candidate is declared to have been improperly accepted. A situation similar to the facts of this case arose for consideration of this Court in Durai Muthuswami's case. It is necessary to deal with this case in detail as the Counsel for the Appellant submitted that the said judgment is not applicable to the facts of the present case and that finding in the said case have to be treated as obiter.

21. The facts, in brief, of the case of Durai Muthuswami are that the Petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of the First Respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the Petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the First Respondent as required by Section 100 (1) (d) of the Act. The Civil Appeal filed by the Petitioner therein was allowed by this Court in Durai Muthuswami (supra) in which it was held as follows:

"3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1) (a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) if the High Court is of opinion— (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act ….

*(b)-(c) * * **

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

*(ii)-(iii) * * **

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted." (Underlining ours)

22. It is clear from the above judgment that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election Petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the Respondent to prove that result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the Appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected. The judgment of this Court in Durai Muthuswami (supra) was referred to in **Jagjit Singh v. Dharam Pal Singh, 1995 Supp (1) SCC 422 page 429** in which it was held as follows:

> "21. The trial Judge has held that since there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause of action.We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. (See: Durai Muthuswami v. N. Nachiappan [(1973) 2 SCC 45 : (1974) 1 SCR 40] .) In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election, insofar as it concerns the returned candidate, would be materially affected."

It was held by this Court in **Vashist Narain Sharma v. Dev Chandra, reported in 1955 (1) SCR 509** as under:

> *"9. The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:*
>
> *(1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes,*
>
> *(2) where the person referred to above secured more votes, and*
>
> *(3) where the person whose nomination has been improperly accepted is the returned candidate himself. It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand."* (Underlining ours).

This Court in Kisan Shankar Kathore v. Arun Dattatray Sawant (supra) dealt with a situation similar to that of this case. In that case, the election of the returned candidate was successfully challenged on the ground of non- disclosure of material information. The appeal filed by the returned candidate was dismissed by this Court by observing as follows:

> *"Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void."*

23. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100 (1) (d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr. Giri that the judgment in Durai Muthuswami (supra) is not applicable to the facts of this case. The submission that Durai Muthuswami is a case of disqualification under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that case was rejected on the ground of non-compliance of Section 100 (1) (d). The said judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void under Section 100 (1) (d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted.

24. For the aforementioned reasons, the Civil Appeal is dismissed. No costs.

Civil Appeal No. 2829 of 2016

25. This appeal is filed by the Petitioner in the election petition challenging that part of the judgment dated 29.02.2016 of the High Court Manipur at Imphal, by which the relief that he should be declared to be elected was rejected. The Appellant contested the election as a candidate of the Nationalist Congress Party (NCP). Respondent No.1 was declared to have been elected on 28.01.2012. The election of the First Respondent was set aside by the High Court in the election petition filed by the Appellant. The Appellant also sought for a relief that he should be declared to have been elected. Such relief was rejected by the High Court.

Hence, this appeal.

26. After the result of the election was declared on 28.01.2012, the Appellant resigned from NCP and joined Bhartiya Janta Party (BJP). To a question posed by the Court during the recording of his evidence, the Appellant stated that he tendered resignation from NCP in the latter part of 2013, that he joined BJP and he continued to be a member of the BJP. In January, 2016, the Appellant filed an application for amendment to the election petition. He intended to insert additional submissions relating to his expulsion from NCP on 23.12.2013 and the representation made by him to the President NCP Manipur to cancel the expulsion order. He also wanted to bring on record the fact that his enrolment to the membership of BJP was rejected on 18.01.2016. He further stated in the application that the order of expulsion by the NCP was revoked by an order dated 21.01.2016.

27. The arguments in the election petition filed by the Appellant were concluded on 25.02.2016. The High Court recorded a finding in the impugned judgment that all the pending miscellaneous applications were disposed of with the consent of both sides and the election petition was to be adjudicated on the basis of existing material on record. As the miscellaneous application filed by the Appellant was not considered, the High Court decided the matter on the basis of the material on record which clearly showed that the Appellant resigned from NCP and joined BJP. After a careful consideration of the material on record, the High Court refused to grant the declaration as sought by the Appellant. The High Court held that having joined BJP, the Appellant was not entitled for a declaration as he contested the election in 2012 on behalf of NCP. The High Court highlighted the fact that the Appellant will be an MLA belonging to BJP, if declared elected after having contested the election on behalf of the NCP. Taking into account the spirit of law as expressed in paragraph No. 2 of the 10th Schedule of the Constitution of India the High Court did not grant the relief sought by the Appellant that he should be declared elected.

28. Ms. Meenakshi Arora, learned Senior Counsel appearing for the Appellant submitted that the 10th Schedule to the Constitution is not applicable to adjudication of an election petition. She relied upon Section 53 (2) of the Act to contend that the Appellant should be declared as duly elected as he was the only person remaining in the fray after the election of respondent/returned candidate was declared void. Section 101 of the Act provides for declaration of the Petitioner to have been duly elected if the High Court is of the opinion that the Petitioner received majority of the valid votes.

29. According to Section 80 (A) of the Act, the High Court will have the jurisdiction to try an election petition. It is well settled law that the High Court hearing an election petition is not an 'authority' and that it remains the High Court while trying an election petition under the Act. ***(See T. Deen Dayal v. High Court of A.P., 1997 (7) SCC 535 at page 540.*** This Court in ***Hari Shanker Jain v. Sonia Gandhi, 2001 (8) SCC 233 at page 244*** upheld the decision of a Full Bench of the Rajasthan High Court wherein it was decided that the jurisdiction of the High Court to try an election petition is not by way of constituting a special jurisdiction and conferring it upon the High Court. It is an extension of the original jurisdiction of the High Court to hear and decide the election disputes. It is clear

from the above judgments of this Court that the inherent power of the High Court is not taken away when the election disputes are adjudicated. Section 53 (2) is a power conferred on the Returning Officer to declare a candidate elected when the number of candidates is equal to the number of seats to be filled. The power of the High Court is not fettered by Section 53 (2). The High Court has taken into consideration an anomalous situation that would arise by a candidate belonging to one party being declared elected after having crossed the floor. We are in agreement with the High Court and we do not intend to interfere with the discretion exercised by the High Court.

30. For the aforesaid reasons, the Civil Appeal is dismissed. No order as to costs.

….....Sd/.....J.

[ANIL R. DAVE]

.....Sd/-.....J.

[L. NAGESWARA RAO]

New Delhi,

October 28, 2016

ITEM NO.–B COURT NO.1 SECTION XVII
(For Judgment)

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

Civil Appeal No (s). 2649/2016

SRI MAIREMBAM PRITHVIRAJ @ PRITHIBIRAJ SINGH Appellant (s)

Versus

SHRI PUKHREM SHARATCHANDRA SINGH Respondent(s)
WITH C.A. No. 2829/2016

Date : 28/10/2016 These appeals were called on for pronouncement fo judgment today

For Appellant (s)	Mr. Sapam Biswajit Meitei, Adv.
(C.A. No. 2649/2016)	Mr. Naresh Kumar Gaur, Adv.
	Mr. Linthoingambi Thongam, Adv.
	Ms. Punam Kumari, Adv.
(C.A. No. 2829)	Ms. Meenakshi Arora, Sr. Adv.
	Mr. Lenin Hijam, Adv.
	Mr. Pratik R. Mombarde, Adv.
	Mr. A.D. Tamboli. Adv.
	Mr. Vasav V. Adv.
	Mr. S. Gowthaman, Adv.
For Respondent(s)	Ms. Meenakshi Arora, Sr. Adv.
	Mr. Lenin Hijam, Adv.
	Mr. Pratik R. Mombarde, Adv.
	Mr. A.D. Tamboli. Adv.
	Mr. Vasav V. Adv.
	Mr. S. Gowthaman, Adv.

Mr. Sapam Biswajit Meitei, Adv.

Mr. Naresh Kumar Gaur, Adv.

Mr. Linthoingambi Thongam, Adv.

Ms. Punam Kumari, Adv.

Hon'ble Mr. Justice L. Nageswara Rao Pronounced the Judgment of the Bench comprising Hon'ble Mr. Justice Anil R. Dave and His Lordship.

In terms of the signed reportable judgment, these appeals are dismissed. No. costs.

(MAHABIR SINGH) (VEENA KHERA)

COURT MASTER COURT MASTER

(Signed Reportable Judgment is placed on the file)

IN THE HIGH COURT OF MANIPUR AT IMPHAL

ElectionPetitionNo.1 of2012

Shri Pukhrem Sharatchandra Singh, aged about 63 years, S/o (L) P.Koiremba Singh, Phairembam Leikai, Moirang, P.O. & P.S. Moirang, Bishnupur District, Manipur-795133

..... Petitioner

-Versus-

Sri Mairembam Prithviraj @ Prithibiraj Singh, aged about

36 years, s/o (L) M.Manindra Singh, Moirang Kiyam Leikai, P.O. & P.S. Moirang, Bishnupur District, Manipur-795133.

..... Respondent

BEFORE

THE HON'BLE MR.JUSTICE N. KOTISWAR SINGH

For the election petitioner	:	Mr. N. Kumarjit, Sr. Adv. Mr. N. Surendrajit, Adv., Mr.P.Tamphamani, Adv.
For the respondent	:	Mr. V. Giri, Senior Adv., Mr.H. Ishwarlal, Adv. Ms. Punam Kumari, Adv., Mr. Sapam Biswajit, Adv., Mr. Manav Vohra, Adv.
Dates of hearing	:	22.02.2016, 23.02.2016,
reserving judgment	:	24.02.2016, 25.02.2016. Date of 25.02.2016
Date of Judgment and order	:	29.02.2016

JUDGEMENTAND ORDER(CAV)

Heard Mr. N. Kumarjit, learned Senior counsel assisted by Mr. N. Surendrajit, Advocate and Mr. P. Tamphamani, Advocate for the election petitioner. Heard Mr. V. Giri, learned Senior counsel assisted by Ms. Punam Kumari, Advocate, Mr. Sapam Biswajit, Advocate, Mr. Manav Vohra, Advocate and heard also Mr. H. Ishwarlal, learned counsel appearing for the respondent/returned candidate.

2. The petitioner who had contested as a Nationalist Congress Party (NCP) candidate from the 27th Moirang Assembly Constituency in the 10th Assembly Election held in 2012 has challenged the election of the respondent

who had successfully contested the election as an Indian National Congress (INC) candidate and seeking declaration of his election as void under Section 100(1)(d)(i) of the Representation of the People Act, 1951 (hereinafter referred to as the "RP Act/Act").

3. The gravamen of the complaint of election petitioner as pleaded in the election petition is filing of false affidavit by the respondent at the time of submission of nomination paper which according to the petitioner would entail in rejection of his nomination paper and, indulging in corrupt practices and electoral malpractices inviting disqualification. Of the aforesaid 2 (two) grounds raised, the election petitioner has abandoned the allegations of electoral malpractices and corrupt practices and has focussed his assailment on the filing of false affidavit which according to the election petitioner would render the nomination paper materially defective and hence, though was liable to be rejected under Section 36(2)(b) of the Act, was improperly accepted, thus, rendering it fit for declaring the election of the respondent as void under Section 100(1)(d)(i) of the RP Act.

4. The 10th Assembly Election of the Manipur which was notified on 4.01.2012 was held on 28.01.2012. The scrutiny of the nomination papers was held on 12.01.2012. The petitioner states that at the time of scrutiny of the nomination papers, the petitioner raised objections to the nomination paper submitted by the respondent and sought for rejecting his nomination paper on 3 (three) grounds, viz.:

(i) that the respondent failed to file proper affidavit prescribed under Article 173 of the Constitution of India;

(ii) that the affidavit filed by the respondent was a false one, as he had falsely deposed at para No.9 of his affidavit dated 06.01.2012 submitted along with the nomination paper that his highest educational qualification is "MBA, 2004, Mysore University" which according to the petitioner is false and, that the respondent at para No. 5 had put the word "Nil" in respect of residential building and concealed parts of his homestead land and structure;

(iii) that the affidavit was filed without subscribing oath or affirmation before the Returning Officer.

5. The petitioner claims that in view of the aforesaid defects and false information provided in the affidavit filed by the respondent along with the nomination paper the petitioner requested the Returning Officer for rejecting the nomination paper of the respondent. On such objection being raised, the Returning Officer directed the respondent to furnish/produce the documents in support of his affidavit pertaining to passing of MBA in 2004 from Mysore University on the next date of the scrutiny on 13.01.2012. On the next date fixed on 13.01.2012, the respondent failed to file the relevant documents in support of his educational qualification mentioned. However, the Returning Officer illegally accepted the nomination paper. The petitioner claims that he subsequently obtained necessary information from the University of Mysore about the aforesaid qualification claimed by the respondent and came to know that the respondent was never a student of MBA from Mysore University in the year 2004-05.

6. The respondent was declared elected after the respondent got 14521 votes whereas the petitioner got only 13363 votes when the result was declared on 06.03.2012.

7. The petitioner claims that he submitted representations on 02.04.2012 and 05.04.2012 before the Returning Officer, 27th Moirang Assembly Constituency seeking for summary proceeding on the objection raised by him as mentioned above. However, as nothing materialised, the petitioner preferred this election petition challenging the election of the respondent and seeking declaration of the election of the respondent as void.

8. The respondent/returned candidate filed his written statement contesting the averments and allegations made in the petition. In his written statement, the respondent had stated that the entry made as regards the educational qualification was a clerical error. He states that he passed B.A. (Honours) in History from Kirori Mal College, Delhi University in 2001 and PG Programme in Service Industry Management which is a 1 year course from August, 2003 July, 2004 from the Institute of Tourism and Future Management Trends under NEC, Govt. of India Special Employment Generation Employment Programme in Service Industry at ITFT, Chandigarh. Thereafter, he worked at Progeon and Infosys and IBM till 2007. It has been stated in his written statement that the word Mysore used was a clerical mistake and it was a "thought processing " of the respondent to obtain MBA degree from University of Mysore through correspondence course as the same was discussed amongst friends and supporters that nowadays people should do MBA courses and there are colleges in Karnataka providing correspondence course facilities. And this thought process emerged in the mind and continued in the wrong depiction of the word. As such it was contended that it was merely a clerical mistake and there was no question of giving any false declaration in respect of any academic qualification as in any case he was neither going to gain nor lose anything by it. Accordingly, when this was explained to the Returning Officer, the objection raised by the election petitioner before Returning Officer was rejected as it was not of a substantial nature. It is provided under Section 36(4) of the RP Act, 1951 that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. It has been also pleaded that even if the allegations of the petitioner are deemed correct, the same do not fall within the meaning of corrupt and malpractices as defined under the Act.

The respondent in his written statement counter charged that the election petition is defective being violative of Section 81(3) of the RP Act, 1951. It has been stated that every page except the first page of the copy of the election petition furnished to the respondent bears only the signature of the petitioner mentioning "Attested" though as per Section 81(3) of the Act each and every copy of the petition is to be attested by the petitioner under his own signature to be a true copy of the petition. Hence, it has been contended that the election petition is liable to be dismissed as violative of Section 81 of the RP Act, 1951.

The petitioner filed the rejoinder affidavit in which it has been claimed that filing of false affidavit amounts to filing of incomplete nomination paper which will make it liable to be rejected under Section

36(2) of the RP Act, 1951. The election petitioner also denied that the error in stating the educational qualification of the respondent was a clerical error.

9. On the basis of the pleadings, the following six (6) issues were framed:

i) Whether the Returning Officer of 27th -Moirang AC has illegally accepted the nomination paper of the respondent or not?

ii) Whether the election of the respondent had been materially affected by the acceptance of the nomination paper of the respondent by the R.O. of 27th -Moirang A/C or not?

iii) Whether the respondent had filed false affidavit in respect of the highest education qualification in the form, in which the respondent had mentioned "MBA Mysore University" or whether it was merely a clerical error?

iv) Whether the petition lacks material facts or not?

v) Whether the election petition is liable to be dismissed for not putting the words "attested to be true copy of the petition" on each and every page of the petition by the petitioner himself or not; or on any of the defects raised by the respondent in his written statement?

vi) Whether the petitioner is entitled to the relief claimed in the writ petition?

10. On examination of the aforesaid six issues framed, it is evident that the petitioner had abandoned his charge made against the respondent about electoral malpractices or corrupt practices and ground of challenge is now confined to the issues as to whether the respondent had filed a false affidavit in respect of his highest educational qualification at the time of filing the nomination paper and whether it was merely a clerical error or not and its consequences and whether the election petition is liable to be dismissed on the ground of improper attestation of the copies of the petition.

11. The parties have adduced their respective evidences.

The election petitioner examined two (2) witnesses in support of his claim, the petitioner himself as PW 1 and his Election Agent, namely, Hemam Boyai Singh as PW 2.

The respondent also adduced evidence and examined himself as DW 1, Sri Philem Shamu Singh, his Election Agent as DW 2 and Chakpram Bimolchandra Singh, a lawyer as DW 3.

12. Of the six issues framed, Issue No. (v) above is to whether the election petition is liable to be dismissed for not putting the words "attested to be true copy of the petition" on each and every page of the petition by the petitioner himself or of any of the defects raised by the respondent in his written statement. Therefore, if the respondent is successful on this issue, there will be no necessity to examine the other issues. If the election petition is dismissed on the ground of non- maintainability due to the alleged defects, the question of deciding the other issues does not arise. Hence, this Court proposes to take up this Issue no. (v) at the first instance. This issue has been raised also in Civil Misc. Case No. 1 of 2012 filed by the respondent. Before we proceed to deal with this issue it may be apposite to refer to relevant provisions of the Representation of People Act, 1951 and the Rules framed thereunder. Section 81(3) of the Representation of the People Act, 1951 reads as follows :-

> "81. Presentation of petitions.—(1) .....
> .....
>
> (3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.
>
> 86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) .....

.....

.....

(7) ..... "

13. It has been contended by the respondents that the petitioner has not attested the copy of the petition to be the true copy of the original petition as required under Section 81(3) of the Act, since only the front page of the copy bears the words "attested to be true copy", though, in respect of other pages of the copy the election petitioner has put his signatures only with the word "attested". It has been contended that the fact that the petitioner has mentioned "attested to be a true copy" in the front page of the copy of the petition shows that he was aware of the requirements of law. However, since he has chosen not to comply with the aforesaid requirements in the subsequent pages, as he has not put his signatures with the words "attested to be true copy" on each page, he must face the consequence of getting the petition dismissed. It has been contended that the said defect is a vital and substantial one which would amount to non compliance with the provisions of Section 81(3) of the RP Act, 1951 which will attract Section 86(1) of the RP Act inviting dismissal of the petition.

14. Though other allegations have been made in the said Civil Misc. Application No. 1 of 2012 contending that the signatures endorsed by the petitioner in the election petition are doubtful as these are completely different from the signature of the petitioner available on official records, and hence vital defects of substantial character, this has not been pursued by the Respondent.

15. It has been also alleged that the affidavit accompanying the election petition suffers from various material defects as the allegations relating to corrupt practice have not been properly verified as to whether these are based on personal knowledge or information received. For example, the contents of paragraphs No. 4.9 and 4.10 of the affidavit filed by the election petitioner are facts of official election process, yet these have been referred to as instances of corrupt practices. Similarly, in respect of contents of paragraph No. 4.16(1) and 4.16(2) of the petition, though these relate to something else, these have been referred to in the accompanying affidavit as instances of corrupt practices of furnishing false statement of possessing higher educational qualifications and non disclosure of assets and properties. These paragraphs which ought to be verified as true to his personal knowledge yet these have been verified as submissions of the petitioner. Thus, it has been contended by the respondent that these are irregularities and defects of substantial nature which are found in the affidavit of the petitioner which are not in conformity with Form No. 25 prescribed under Rule 94-A and hence, the election petition is liable to be dismissed. These allegations, of course, had been denied by the election petitioner contending that these defects are of no substantial nature.

16. With reference to this Issue no. (v), the parties have referred to an array of decisions to support their respective contentions.

17. The respondent has relied on the following, inter alia, decisions :

(1) Mukhtiar Singh Vs. The Chief Election Commissioner and Dharam Dev Solanki MLA, AIR 1997 Delhi 116;

(2) Ved Prakash Gaur Vs. Sukhan & Ors., AIR 1984 Delhi 27th 6;

(3) Sharif-ud-Din Vs. Abdul Gani Lone, AIR 1980 SC 303;

(4) Kushalchand Vs. Harlal and Ors., AIR 1978 M.P. 174;

(5) Rajendra Singh Vs. Usha Rani, AIR 1984 SC 956;

(6) Mithilesh Kumar Pandey Vs. Baidyanath Yadav & Ors., AIR 1984 SC 305;

(7) Mrs. Vinod (Vinod Chadha) Vs. Kirpal Singh Dhilon & Anr., AIR 1987 P & H 110;

(8) Harcharan Singh Josh Vs. Hari Kishan, (1997) 10 SCC 294;

(9) Purushottam Vs. Returning Officer, Amravati and Ors., AIR 1992 Bombay 227th .

In Mukhtiar Singh (supra), it has been held that since there was no endorsement of the petitioner in the copy of the petition that it is an attested true copy of the petition and there has been substantial variance between the election petition and copy thereof which has been furnished to the respondent, the latter cannot be

considered to be true copy of the former and hence, the election petition is liable to be dismissed for violating Section 81(3).

In Ved Prakash Gaur (supra), the petitioner supplied photostat copy of the petition without requisite attestation and petition was held liable to be dismissed since copies filed along with petition were not attested by the petitioner "under his own signature" to be true copy of the petition, holding that provisions of Section 86 are mandatory.

In Sharif-ud-Din (supra), the Hon'ble Supreme Court held that requirement that copy of election petition for respondent should be attested by petitioner is a mandatory one, non-compliance whereof would make the petition liable to be dismissed.

In Kushalchand (supra), the MP High Court held that failure to supply copy of annexure in election petition to the respondent is fatal.

The Hon'ble Supreme Court in Rajendra Singh (supra) held that furnishing of incorrect copy of the election petition filed to the respondent amounts to non-compliance of Section 81(3) and is liable to be dismissed.

In Mithilesh Kumar Pandey (supra), the Hon'ble Supreme Court held that while making allegations of corrupt practices, mistakes in copy of petitions supplied to elected candidate as regards names of persons to whom corrupt practices were alleged to have been committed by him such mistakes relating to omission of some names giving wrong names, etc. are fatal and the petitions are liable to be dismissed in limine.

In Mrs. Vinod (Vinod Chadha) (supra), the Punjab and Haryana High Court held that the Photostat copy supplied to the other party should be certified by the petitioner to be a true copy in order to conform to the provisions of Section 81(3).

18. The respondent further relied on the decisions of Harcharan Singh Josh (supra) in which it was held that the copy of the affidavit supplied to the respondent not containing the affirmation by the Oath Commissioner was held to be not curable defect and it was further held that the said substantial compliance has no application in such a case, thus, upholding dismissal of election petition on that ground. However, in the later decision in T. Phungzanthang Vs. Hangkhanlian & Others, (2001) 8 SCC 358, this decision was held to be no longer a good law in view of the Constitution Bench decision in T.M. Jacob Vs. C. Poulose and Others, (1999) 4 SCC 1027.

The respondent also relied on the decision of Purushottam (supra) that absence of endorsement of Notary on the copy of affidavit accompanying election petition is fatal. The respondent has also relied on other decisions of the Hon'ble Supreme Court relating to corrupt practice, lack of material facts, lack of cause of action etc.. However, as the ground of challenge in the election petition insisted upon is based mainly on the issue whether the petitioner has filed false affidavit or not, this Court is of the view that it may not be necessary to digress to other issues.

19. The election petitioner, on the other hand pressed into service the following decisions, inter alia, in support of his contention that the election petition does not suffer from any defect as alleged by the respondent :-

1) Subbarao Vs. Member, Election Tribunal, Hyderabad, AIR 1964 SC 1027th ;
2) T.M. Jacob Vs. C. Poulose and Others, (1999) 4 SCC 1027 ;
3) Bhagwan Rambhau Karankal Vs. Chandrakant Batesingh Raghuwanshi, 2001 (6) Supreme 101;
4) T. Phungzanthang Vs. Hangkhanlian & Others, (2001) 8 SCC 358;
5) Ram Prasad Sarma Vs. Mani Kumar Subba and Others, (2003) 1 SCC 289;
6) ChandrakantUttamChodankar Vs. DayanandRayu Mandrakar and Others, (2005) 2 SCC 188;
7) Umesh Challiyill Vs. K.P. Rajendran, (2008) 11 SCC 740;
8) Ponnalal Lakshmaiah Vs. Kommuri Pratap Reddy and Others, (2012) 7 SCC 788;
9) G.M. Siddeshwar Vs. Prasanna Kumar, (2013) 4 SCC 776;

20. This Court proposes to refer to only those cases of both the parties which the Court considers to be directly relevant to the issue at hand.

21. As regards the objection raised by the respondent that the election petition is liable to be dismissed on the ground of non-conformity with Section 81(3) of the RP Act, 1951, which is a procedural defect, there are overwhelming judicial pronouncements that the Court ought not to take a hyper technical view and that it is only where there is total or near total non-compliance of the provisions of Section 81(3) that it may render such election petition liable to be dismissed. However, if there is a substantial compliance with the requirements of Section 81(3), the election petition cannot be dismissed. The Hon'ble Supreme Court as far back as in the year 1964 in Ch.

Subbarao Vs. Member, Election Tribunal, Hyderabad and Ors., AIR 1964 SC 1027th had dealt with the case in which the election petition was typewritten and copies which accompanied the petition were carbon copies of the typescript. The copies bore 2 (two) signatures in original of the election petitioner authenticating both the contents of the petition as well as the verification thereof. The petitioner did not, however, insert the words "true copy" before or above his signatures. The High Court dismissed the election petition on the ground of non-compliance of provisions of Section 81(3) of the Act. The Hon'ble Supreme Court held that if the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of the document. The aforesaid decision in Ch. Subbarao (supra) was relied upon by another Constitution Bench in Dr. Anup Singh Vs. Shri Abdul Ghani and Ors., AIR 1965 SC 815. In Para No. 7, the Hon'ble Supreme Court held that :-

> "(7) An exactly similar matter came to be considered by this Court in Ch. Subba Rao v. Member, Election Tribunal, AIR 1964 SC 1027th . In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words "true copy" were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words "true copy" were not written above the signature in the copies. This Court further held that there was substantial compliance with S. 81(3) of the Act and the petition could not be dismissed under S. 90(3). That case applies with full force to the facts of the present case, and it must therefore be held that there was substantial compliance with S. 81 (3) and the petitions could not therefore be dismissed under S. 90(3)."

22. In the present case at hand, even if the election petitioner did not write the words "attested to be true copy of the petition", along with his signatures, the election petitioner wrote the words "attested" before his signatures in his own hand writing on each page, thus, in conformity with the aforesaid 2 (two) decisions of the Hon'ble Supreme Court. This Court is of the view that since the election petitioner had put his signatures on the copies furnished to the respondent and also had written the word "attested" on each page, he has substantially complied with the requirements of Section 81(3) of the RP Act, 1951. Hence, it cannot be said that the election petitioner has not complied with the provisions of Section 81(3) and cannot, therefore, be dismissed under Section 86(1) of the Act as sought by the respondent in view of the above Constitution Bench decisions in Ch. Subbarao (supra) and Dr. Anup Singh (supra). This Court is of the view that it may not be necessary to deal with the other case laws relied upon by the respondent as these are not applicable to the present case.

23. Accordingly, the Issue no. (v) as to whether the election petition is liable to be dismissed for not putting the words "attested to be true copy of the petition" on each and every page of the petition by the petitioner himself; or on any of the defects raised by the respondent in his written statement, is decided against the respondent and in favour of the petitioner.

24. As regards the other Issue No. (iv) as to whether the petition lacks material facts or not, since the election petitioner has more or less given up his grounds of challenge based on electoral malpractices or corrupt practices, this Court would confine to the issue as to whether there are sufficient materials as regards the allegation that the respondent had filed a false affidavit or not and need not burden this judgment with the judicial pronouncements relating to material facts.

As regards this allegation that the respondent had filed a false affidavit regarding his educational qualifications, this Court is of the opinion that the election petitioner has pleaded with sufficient materials as mentioned in paragraphs No. 4.4, 4.5, 4.6, 4.8, 4.19, 4.20 of the election petition. Accordingly, it cannot be said that the petition lacks material facts as regards this allegation.

Mr. Kumarjit, Learned Senior counsel submits that with regard the issue as to whether the pleadings lack material facts, it has been submitted that the petitioner has abandoned all the pleas about corrupt practices. Thus, this plea of the respondent that the election petition lacks material particulars is without any substance. He submits that as far as the allegation of giving false affidavit is concerned, the petitioner has given all the material facts and particulars. He submits that as regards the allegation of the respondent that the affidavit of the petitioner in the election petition suffers from material defect is without any substance as these allegations relate to the method of corrupt practices. Since, he has already abandoned the claim regarding corrupt practices of the respondent, this defect appearing in his affidavit does not matter. It has been submitted that, in any event, as regards the allegation of filing of false affidavit at the time of submission of nomination, such allegation does not require to be supported by any affidavit as is required in the case of allegation of corrupt practice. Referring to proviso to sub-section (1) of Section 83 of the RP Act, the Learned Senior counsel submits that only when the challenge to the election is based on corrupt practice of the returned candidate, the petition is to be accompanied by an affidavit in the prescribed form, otherwise not.

Hence, this Issue No. (iv) as to whether the petition lacks material facts is decided against the respondent.

25. Regarding Issues No. (i), (ii) and (iii), Issues No. (i) and (ii) are dependant upon the finding in Issue No. (iii). Accordingly, we proceed to first deal with the Issue no. (iii) as to whether the respondent had filed false affidavit

in respect of highest educational qualification in Form no. 26 in which the respondent had mentioned "MBA, 2004, Mysore University" or whether it was merely a clerical error.

26. The case of the election petitioner as regards this Issue No. (iii) is that the respondent while filing his nomination paper submitted an affidavit in Form No. 26 as required under Section 33 of the Act read with Rule 4A of the Conduct of Elections Rules, 1961 in which the respondent had mentioned in para 9 of the said affidavit that his highest qualification is "MBA, 2004, Mysore University" though he did not possess MBA from Mysore University. Accordingly, it has been contended by the election petitioner that the respondent had filed a false affidavit as regards his educational qualification. The plea of the respondent is that he did not give any false declaration in respect of his academic qualification but what was stated in the affidavit was merely a clerical error. It was his plea in the written statement that it was his thought process to obtain MBA degree from Mysore University through correspondence course as the same was discussed amongst friends and supporters that nowadays people should have MBA course and there are colleges in Karnataka providing correspondence course facilities. This thought process emerged in his mind and continued in wrong depiction of the word. He thus contends that this is a clerical mistake from which he was neither going to gain or lose anything. Thus, when the mistake was explained to the Returning Officer at the time of scrutiny of nomination paper, Returning Officer decided not to reject the nomination paper as the same was not of substantial nature.

27. As we proceed, we may briefly refer to the grounds under which an election could be declared void by the High Court which are provided under Section 100 of the RP Act.

Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 100 specify the grounds under which the election of the Returned candidate can be declared void.

Section 100(2) clarifies the conditions in which the election of the Returned candidate may not be declared void. The present case does not fall under this category.

Clause (a) of Section 100(1) provides the situation where a returned candidate was not qualified on the date of his election or was disqualified, to be chosen to fill the seat under the Constitution or this Act. It is not the case of the election petitioner that the respondent was not qualified or was disqualified, to be chosen to fill the seat under the Constitution or this Act. Hence, clause (a) of Section 100(1) is not attracted in the present case.

Clause (b) of Section 100(1) provides that an election can be declared void if the Court finds that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In the present case, though corrupt practice was one of the grounds pleaded in the election petition, the election petitioner has abandoned this ground, hence no issue was framed in this regard and he has not led any evidence in this regard. Hence, the ground provided under clause (b) of Section 100(1) is not attracted in the present case.

Clause (c) of Section 100(1) provides for declaring the election void if any nomination is improperly rejected. Since in the present case there is no such case of improper rejection of any nomination, this ground is also not applicable.

This leaves the last ground for declaring the election to be void as provided under clause (d) of Section 100(1) of the Act which provides that if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate or by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,the election of the returned candidate shall be declared void.

As mentioned above, the allegations of corrupt practice has been already abandoned by election petitioner. Similarly, there is also no case of improper reception, refusal or rejection of any vote or the reception of any vote which is void in the present case. Thus, the only grounds left are of the improper acceptance of any nomination as provided under clause (d)(i) of Section 100(1) and of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act as provided under clause (d)(iv) of Section 100(1) of the RP Act, 1951.

28. It is the case of the election petitioner that the nomination paper of the respondent had been improperly accepted, which was otherwise liable to be rejected as the respondent had filed a false affidavit giving false

information about his highest educational qualification. Hence, the election of the respondent is liable to be dismissed under Section 100(1)(d)(i).

It would be pertinent here to refer to the relevant provisions of the RP Act, 1951 which deal with the filing of nomination paper and the grounds for rejection thereof.

Section 33 of the Act deals with presentation of nomination paper and stipulates the requirements for a valid nomination. It, inter- alia, provides that the nomination paper must be completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. Though Section 33 of the Act does not specifically mention filing of any affidavit along with nomination paper, it is so provided under Rule 4A of the Conduct of Elections Rules, 1961. Rule 4A provides that the candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26 as contained in the Rules furnishing detailed particulars relating to the antecedents criminal or otherwise of the candidate, assets and liabilities of the candidate, and also the educational qualification. There is another provision under the RP Act which requires a candidate to furnish information at the time of submission of nomination paper under Section 33A of the Act.

29. Section 36 of the RP Act, 1951 which deals with the scrutiny of nomination papers and provides the grounds under which nomination can be rejected reads as follows :

> "36. Scrutiny of nominations.—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.
>
> (2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—
>
> [(a) that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—
>
> Articles 84, 102, 173 and 191,
>
> [Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] or
>
> (b) that there has been a failure to comply with any of the provisions of section 33 or section 34 ; or
>
> (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.
>
> (3) Nothing contained in clause (b) or clause (c)] of sub- section (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.
>
> (4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.
>
> (5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:
>
> Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.
>
> (6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act,1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

(emphasis added)

30. Therefore, the issue whether a nomination paper of a candidate has been improperly accepted or not has to be examined with reference to the above provisions of Section 36 of the RP Act and related law governing the field. We will, therefore, examine the relevant laws relating to the requirements of a valid nomination paper, filing scrutiny, etc.

31. As we proceed to examine the requirements of a valid nomination paper, more particularly, in the context of the present controversy which revolves around the issue of the educational qualification of the respondent in his nomination paper which the election petitioner charges to be false though the respondent claims to be a mere clerical error, we may revisit the relevant judicial pronouncements.

32. While dealing with various shortcomings plaguing the Indian electoral system and to stem the tide of criminalisation of Indian politics, very important issues arose before the Courts about the right of the voters to know of the relevant particulars of the candidates, as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. These issues had also engaged the Law Commission of India which in its 178th Report had proposed certain changes under Rule 4 of the Conduct of Election Rules, 1961 for providing certain information. The matter was first considered before the High Court of Delhi which took the view that the changes proposed for providing information by amending the relevant provisions of the Conduct of Electoral Rules, 1961 was within the domain of the legislature and it was for the Parliament to make necessary amendments in the RP Act, 1951 and the relevant Rules. However, the High Court also made a very significant direction holding that a citizen of this country has a fundamental right to receive information regarding the criminal activities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful and accordingly directed the Election Commission of India to secure to voters the following information of each of the candidates :

"1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so, the details thereof.

2. Assets possessed by a candidate, his or her spouse and dependent relations.

3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature."

The aforesaid directions were challenged by the Union of India before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294 elaborately discussed the various issues including the right of the citizen to know about the candidates contesting election and observed in paragraph no. 46 as follows:

"46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1. .....

2. .....

3.....

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

"(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers."

Thereafter, the Hon'ble Supreme Court issued the following directions as mentioned in paragraph Nos. 47, 48 and 49 of the judgment which are reproduced hereinbelow :-

"47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.

49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months."

Though the Hon'ble Court was primarily concerned with the criminalisation and misuse of money and muscle power in the politics, thus requiring the candidates to disclose their assets and criminal antecedents, if any, also brought in the requirement for disclosing the educational qualification as a concomitant requirement.

33. After the aforesaid judgment of the Supreme Court, an Ordinance which was promulgated by the President of India on 24.08.2002 by which Sections 33A and 33B were inserted in the RP Act, 1951. Later the said Ordinance was repealed and the Representation of People (3rd Amendment) Act of 2002 was notified inserting Sections 33A and 33B in the RP Act, 1951. Section 33A requires the candidate to furnish additional information as to -

(i) whether he is accused of any offence punishable with imprisonment for 2 (two) years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction.

(ii) whether he has been convicted of an offence other than any offence referred to in sub-section (1) or sub- section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

Section 33B provided that notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under.

The aforesaid Section 33A did not provide for furnishing of the information as directed by the Supreme Court in Assn. for Democratic Reforms (supra) and sought to whittle down the scope of the directions by incorporating Section 33B.

34. The aforesaid Section 33B inserted by the 3rd Amendment Act of 2002 was challenged before the Court in People's Union for Civil Liberties (PUCL) and Another Vs. Union of India and Another, (2003) 4 SCC 399. The Hon'ble Supreme Court while dealing with this issue touched upon various aspects of the directions issued by the Hon'ble Supreme Court in the earlier case of Association for Democratic Reforms' case (supra) and reaffirmed the said decision which required furnishing of information by the candidates as regards the antecedents relating to criminal cases/offences, assets, liabilities and debts of the candidates and their spouses and children and lastly the educational qualification of the candidates. The aforesaid direction by the Hon'ble Supreme Court for furnishing information was based on the broader interpretation of Article 19(1)(a) which guarantees freedom of speech and expression to the citizen of this country. The aforesaid information were held to be an important ingredients of Article 19(1)(a) and accordingly, the Hon'ble Supreme Court made the following observations :

> **"18.** So, the foundation of a healthy democracy is to have well- informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man — a citizen — a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity."

35. Hon'ble M.B. Shah, J in his elaborate judgment in the aforesaid case of PUCL summarised the issues as mentioned in para 78 of the judgment, relevant portions of which is reproduced hereinbelow :

> "**78.** What emerges from the above discussion can be summarised thus:
>
> (A) .....
>
> (B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.
>
> The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.
>
> (C) The judgment rendered by this Court in Assn. for Democratic Reforms[1] has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).
>
> (D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties.

However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) ...."

Section 33B was accordingly declared as null and void.

36. Hon'ble V. Venkatarama Reddi, J. though endorsed the view as regards unconstitutionality of Section 33B, however, expressed disagreement in certain areas, inter alia, holding that the failure to provide for disclosure of educational qualification, does not, in practical terms, infringe the freedom of expression as summarised by His Lordship in para 123 of the judgment which is reproduced herein below :

"123. Finally, the summary of my conclusions:

(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

(3) The directives given by this Court in Union of India v. Assn. for Democratic Reforms[1] were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

1: (2002) 5 SCC 294

(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced." (**Emphasis added**)

37. Hon'ble Dharmadhikari, J. while by and large agreeing with the views of the two Hon'ble Judges, clarified that His Lordship agreed with Sections (a) to (e) in the opinion of Hon'ble M.B. Shah, J and the Conclusions (1), (2), (4), (5), (6) (7) and (9) in the opinion of the Hon'ble P.Venkatarama Reddi, J. However, His Lordship expressed his inability to agree with Conclusions (3) and (8) in the opinion of Hon'ble P.Venkatarama Reddy, J. and on those aspects expressed his agreement with views of the Hon'ble M.B. Shah J. as mentioned in para 131 and 132 which are quoted hereinbelow :

"**131.** With these words, I agree with Conclusions (A) to (E) in the opinion of Brother Shah, J. and Conclusions (1), (2), (4), (5), (6), (7) and (9) in the opinion of Brother P.V. Reddi, J.

132. With utmost respect, I am unable to agree with Conclusions (3) and (8) in the opinion of Brother P.V. Reddi, J., as on those aspects, I have expressed my respectful agreement with Brother Shah, J."

Thus, Hon'ble Dharmadhikari J. did not agree with the view of Hon'ble P. Venkatarama Reddi J. that failure to provide for disclosure of educational qualification does not in practical terms infringe the freedom of expression.

38. From the above decisions what transpires is that as regards the disclosure of educational qualification by the candidate, the majority view in the aforesaid decision in PUCL is that it cannot be said that it is not an important facet of the freedom of expression and non disclosure of educational qualification will infringe the freedom of expression. In other words, it is necessary to disclose information about educational qualification as part of the right of the voter under Article 19(1)(a).

39. The inference which can be drawn is that failure to furnish information as regards the educational qualification by a candidate would be a serious lapse on the part of the candidate as it would violate the right of the voters under Article 19(1)(a).

40. It is to be noted that pursuant to the decision of the Hon'ble Supreme Court in Association for Democratic Reforms (supra), Rule 4A was inserted by S.O. 935(E) dated 3rd September, 2002 which reads as follows :-

"4A. Form of affidavit to be filed at the time of delivering nomination paper.- The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

41. In terms of the aforesaid Rule 4A, a candidate is to submit an affidavit with detailed particulars as provided in Form 26. Para No. 8 and 9(9) of the aforesaid Form 26 as then applicable required giving information about the educational qualification/highest educational qualification. It is in the Form 26 submitted by the respondent that, the respondent had given his educational qualification/highest educational qualification as "MBA, 2004, Mysore University" which is at the heart of the dispute between the parties in this election petition. Before we proceed further, this Court would like to refer to other subsequent decisions of the Hon'ble Supreme Court which will have a bearing on this issue.

42. The Hon'ble Supreme Court in Resurgence India Vs. Election Commission of India and Another, (2014) 14 SCC 189 had re-examined the issue of the decisions rendered in Association for Democratic Reforms (supra) and PUCL Vs. Union of India (supra) when a writ petition was filed under Article 32 of the Constitution for issuance of directions for meaningful implementation of the direction issued in the aforesaid two judgements. The Hon'ble Supreme Court in Resurgence India (supra) revisited the relevant laws and issued the following directions clarifying certain issues as mentioned in para no.29 of the judgment.

"29. What emerges from the above discussion can be summarised in the form of the following directions:

29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the

nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

29.5. We clarify to the extent that para 73 of People's Union for Civil Liberties case[2] will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars.

29.6. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her."

2 : People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399. (**emphasis added**)

43. Thus, from the aforesaid directions of the Hon'ble Supreme Court, the right to know full particulars of a candidate which includes information about the educational qualifications as a vital part of the Article 19(1)(a) of the Constitution of India was reiterated. It was emphasised in Resurgence India (supra) that filing of an affidavit with blanks on the particulars on the affidavit would make it liable to be rejected by the Returning Officer.

44. In the background of the aforesaid legal position we shall examine the present case at hand.

45. The election petitioner has focussed his challenge mainly on the ground that the respondent by showing his highest educational qualification as having obtained MBA degree from Mysore University in 2004 in his affidavit filed under Rule 4A of the Conduct of Election Rules, 1961 has filed a false affidavit which had rendered his nomination paper liable to be rejected by Returning Officer under Section 36(2) as there has been a failure on the part of the respondent to comply with the provisions of Section 33. However, since the nomination paper of the respondent was not rejected but instead was improperly accepted by the Returning Officer, it constitutes a valid ground for declaring the result of the respondent void under Section 100(1)(d)(i) of the RP Act, 1951.

46. Mr. N. Kumarjit, learned Senior counsel submits that the petitioner had specifically pleaded in his election petition in para 4.4. thereof that the petitioner had objected to the nomination of the respondent on the ground that the respondent failed to file a proper affidavit and that the affidavit is a false one as the respondent had falsely deposed at para No. 9 of the affidavit dated 6.01.2012 that his educational qualification is "MBA, 2004, Mysore University", which is a false statement. It was further pleaded that the aforesaid affidavit dated 6.01.2012 filed by the respondent was also not made by subscribing oath before the Returning Officer or any competent authority as prescribed by the Election Commission of India.

47. Mr. Kumarjit, learned Senior counsel submits that the petitioner had requested the Returning Officer for rejecting the nomination paper of the respondent as the respondent filed a false affidavit and upon hearing the objection raised by the petitioner for rejecting the improper nomination of the respondent, the Returning Officer directed the respondent to furnish/produce the documents in support of his affidavit about the educational qualification. It has been stated that in spite of such objection and failure on the part of the respondent to produce the relevant documents, the Returning Officer illegally accepted the nomination filed by the respondent.

48. It has been contended by Mr. Kumarjit, learned Senior counsel that the respondent never obtained MBA degree from Mysore University in the year 2004. Mr. Kumarjit further submits that these assertions and pleadings in the election petition were never denied by the respondent in his written statement filed. He submits that the respondent in his written statement had made an evasive reply by claiming that the aforesaid entry regarding the educational qualification of the respondent was only a clerical error. Mr. Kumarjit further submits that the aforesaid educational qualification was falsely mentioned in the affidavit of the respondent in order to impersonate himself to be at par with the petitioner who is a retired IAS officer of the Manipur-Tripura Cadre and to mislead the voters. Mr. Kumarjit submits that it has been specifically so pleaded in para 4.17 of the election petition but the aforesaid averment has remained uncontroverted by the respondent.

49. Accordingly, Ld. Senior Counsel submits that as the respondent has not specifically denied that he had obtained his educational qualificationof MBA from Mysore University in the year 2004 and as he had intentionally given the said educational qualification to mislead the voters, the nomination paper was liable to be rejected, which the Returning Officer did not do so and as such it is a clear case of improper acceptance of the nomination of the respondent.

50. Mr. Kumarjit, Ld. Senior Counsel relying on the decision of the Hon'ble Supreme Court in Kisan Shankar Kathore Vs. Arun Dattatray Sawant and Others, (2014) 14 SCC 162 submits that filing of such false affidavit would lead to rejection of the nomination paper and the effect would be that such a candidate was not entitled to contest the election and the election is liable to be declared as void. It has been submitted by

Mr. Kumarjit that in the case of Kisan Shankar Kathore (supra), the Bombay High Court held that non disclosure of a bungalow in the name of the spouse of the returned candidate and the outstanding taxes thereof, non disclosure of a vehicle owned by the returned candidate's wife, non disclosure of property purchased in the name of the partnership firm of the returned candidate would render the affidavit nugatory as the affidavit filed by the candidate suffers from substantive defect and hence, the nomination of the returned candidate was held to be improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. It was also held that it also amounts to non compliance with the order passed by the Election Commission under Article 324 of the Constitution of India which is founded on the law declared by the Apex Court under Article 141 of the Constitution within the meaning of Section 100(1)(d)(iv) of the Act.

51. Mr. Kumarjit, Ld. Senior Counsel submits that the Hon'ble Supreme Court upheld the finding of the Bombay High Court as regards non-disclosure of the bungalow in the name of the returned candidate's wife, the vehicle in the name of his wife, his interest/share in the partnership firm, which were held to be substantial lapses and the Hon'ble Supreme Court was held therein that it cannot be said that the information contained in the affidavit are to be treated as substantial compliance. The Hon'ble Supreme Court accordingly upheld the decision of the Bombay declaring the election of the returned candidate as void. The Hon'ble Supreme Court held in para 43 as follows :

"**43.** When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section

125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot bequestioned. This cannot be countenanced."

(emphasis added)

Accordingly, Mr. Kumarjit, Learned Senior counsel for the petitioner submits that since the respondent has been found to have given false affidavit regarding his educational qualification in the Form 26 as required under Rule 4A of the Conduct of Election Rules, 1961, his nomination paper was liable to be rejected and since it was a case of improper acceptance, the election of the respondent is also liable to be declared void under Section 100(1)(d)(i) of the RP Act, 1951.

52. In response, Mr. V. Giri, Learned Senior counsel for the respondent, contends that the election petition is not to be equated to an action at law or inequity but the rights are purely the creature of statute. Hence, if the election petition has to succeed he has to succeed within the parameters of the laws of Representation of People Act, 1951 and has to fulfil the requirements of law laid down under various provisions of the Act. He contends that Section 100(1)(d) postulates voidance of election only when not only the conditions enumerated in sub-clauses (i), (ii), (iii) and (iv) of clause (d) of Sub-section (1) of Section 100 are satisfied but also when it is shown that because of that, the result of the returned candidate has been materially affected. In other words, in respect of challenge under Section 100(1)(d) the election petitioner has to prove not only that there was improper acceptance of any nomination, as in this case, and also that such improper acceptance has materially affected the result of the election in so far as it concerns the returned candidate. Similarly, if the election is sought to be declared void under Section100(1)(d)(iv) the election petitioner has to prove not only non compliance with the provisions of the Constitution or of the Act or of any rules or orders made under the Act by the respondent but also that such non compliance has materially affected the result of the election in so far as it concerns the returned candidate.

Mr. V. Giri, Learned Senior counsel submits that the sum and substance of the allegation of the petitioner against the respondent is the filing of incorrect or false affidavit by the respondent under Form 26. This allegation, thus, in essence is about non compliance with the provisions of the Constitution or of the RP Act or rules or orders

made under the Act, hence, comes under Section 100(1)(d)(iv) of the Act. He submits that co-relating this with the power of the Returning Officer to reject nomination which is subject to Section 36(4), it must therefore, be first demonstrated that such a defect is of substantial character to prompt the Returning Officer to reject the nomination paper under Section 36(2) of the Act. He submits that power of the High Court under Section 100(1)(d) of the Act is obviously much larger and higher in scope than the limited and summary jurisdiction available to the Returning Officer under Section 36(2). Therefore, unless such non compliance is of a substantial nature, this Court would not invoke the power under Section 100(1)(d)(i) or (iv) to declare the election void. Mr. V. Giri, Learned Senior counsel submits that in the present case the election petitioner has not at all pleaded, not to speak of proving that the improper acceptance of the nomination of the respondent or any non compliance with the provisions of the Constitution or of the Act or of the rules by the respondent has materially affected the result of the election, in so far as it concerns the returned candidate, i.e. of the respondent. In order to press home this point he relies on the decision of the Hon'ble Supreme Court in Mangani Lal Mandal Vs. Bishnu Deo Bhandari, (2012) 3 SCC 314. The Hon'ble Supreme Court in the said case of Mangani Lal Mandal (supra) held at para 10 and 11 as follows :

> **"10.** A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.
>
> **11.** A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal[4]; (2) L.R. Shivaramagowda v. T.M. Chandrashekar[5]; and (3) Uma Ballav Rath v. Maheshwar Mohanty[6]."
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> 4. AIR 1964 SC 1200 : (1964) 6 SCR 54 –
>
> 5. (1999) 1 SCC 666 –
>
> 6. (1999) 3 SCC 357" –

53. He also has relied on the decision in Surendra Nath Khosla Vs. S. Dalip Singh, AIR 1957 SC 242 to the same effect.

54. He submits that this requirement of pleading and proving that the result of the election of the returned candidate had been materially affected, has been inserted by the Parliament as far as the grounds for challenge are based on the sub-clauses (i) to (iv) of sub- section (d) of Section 100(1). Hence, this statutory requirement cannot be given a go by. He submits that such statutory requirement of proving that the result of the returned candidate has been materially affected is not required to be pleaded nor to be proved in respect of the rejection of nomination as provided under Section 100(1)(c). Under Section 100(1)(c) if any nomination has been improperly rejected, once the same has been proved, the result of the election has to be declared void by the High Court. There is no need to prove any further that because of the improper rejection of nomination the election of the returned candidate had been materially affected. According to Learned Senior counsel for the respondent, there is not even a whisper in the pleadings that the result of the election has been materially affected by the improper acceptance of the nomination of the respondent. He further submits that there is nothing in the evidence also to show that the result of the election has been materially affected by the improper acceptance of the nomination of the respondent. Accordingly, he submits that on this ground alone this petition is liable to be dismissed.

55. Coming to the issue as to whether the nomination of the respondent was improperly accepted or not, Mr. V. Giri, Learned Senior counsel submits that there was no improper acceptance of the nomination of the respondent inasmuch as the defect in the affidavit filed by the respondent was not of a substantial character but a minor one.

He submits that the error in giving educational qualification cannot be said to be of a substantial character. He draws attention of this Court to Section 33A of the Act which requires furnishing of certain information but it does not mention the requirement for furnishing educational qualification. He also draws the attention of this Court to Form No. 26 which is the format of the affidavit to be filed by the candidate along with the nomination paper before the Returning Officer as required under Rule 4A of the Conduct of Elections Rules, 1961. In the aforesaid form under the heading "Verification" it is clearly mentioned that the deponent is required to make further declarations about the criminal cases or convictions, etc. and also about the assets and liabilities of the candidate, the spouse and dependants. Yet, there is no mention of the educational qualifications in the said portion of verification.

He further submits that perusal of the Form 26 would clearly reveal that while there are elaborate and detailed columns as regards the criminal antecedents and assets and liabilities there is only a simple paragraph for the educational qualification. Thus, the statutes as well as the judicial pronouncements have been giving more emphasis on the criminal antecedents and assets and liabilities of the candidates, and same high degree of importance is not given when it comes to educational qualification. He, therefore, submits that the provision for furnishing information regarding the educational qualification is to make the voter know as to whether the candidate is literate or not and nothing more. Hence, nothing more should be read into the requirement of information about educational qualification.

He submits that the authorities or rule making authorities have put these two categories of information regarding the criminal antecedents and assets and liabilities at the higher pedestal than the information about educational qualification for obvious reasons. He submits that in fact, the entire history and background leading to the rendering of the judgment in Association for Democratic Reforms (supra), clearly indicate that not only the Parliament but the Hon'ble Supreme Court were deeply concerned with the criminalisation of politics because of large scale participation of people with criminal track records and also misuse of money, etc. He submits that no such importance was given to the requirement of furnishing information about educational qualification except for the fact that the said requirement was only for the purpose of making the electorates aware of the educational qualification of the candidates. The question of any misuse of authority is not related with the educational qualification, which persons with criminal background or from propertied class may have. He, therefore, submits that wrong information regarding education qualification cannot be considered to be of any vital importance or of substantive nature.

Mr. V.Giri, learned Senior counsel has drawn attention of this Court to the observation made by Mr. Hon'ble Shah, J in para 18 of the judgment in PUCL Vs. Union of India (2003) (supra) to show the concern of the Courts relating to candidates with criminal background and also about the financial background where the educational qualification has not been discussed at all, which is reproduced herein below :

> **"18.** So, the foundation of a healthy democracy is to have well- informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man — a citizen — a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy and mockery or a farce, information to voters is a necessity."

Thus, the right to information of the electorates with regards the criminal antecedents and assets and liabilities of the candidate has been placed at a higher pedestal and hence also been given specific statutory recognition by inserting Section 33A in the Representation of People Act, 1951.

He submits that possession of any particular educational qualification is not an essential qualification/requirement for contesting elections as even an illiterate person also could contest. He submits that it is not really a matter of educational qualification of the candidate which matters to the voters so long as he is perceived to have the potential of being a good public servant after being elected. Therefore, though the law requires furnishing of educational qualification, error in giving such information cannot be said to be of substantial character so as to entail rejection of the nomination. He submits that what the law requires is the highest educational qualification and law does not contemplate giving a detailed educational qualification from the lowest level to the highest. Hence, other lower educational qualifications were not given by the respondent. It is also not the case that the petitioner is illiterate and yet

he claims to be a very well educated person having an MBA degree. He had already completed his graduation from Delhi University and also had undertaken post graduation course in Service Industry Management. Therefore, it is not a case of total lack of educational qualification which would make such error in furnishing wrong qualification in the affidavit to be of a substantial nature. It is also not a case that because of the educational qualification given as MBA, it had swayed the decision of the electorates. The election petitioner has not led any evidence to show that because of the educational qualification given as MBA it led to swaying of votes in favour of the respondent. In fact, there is nothing to show that the votes garnered by the respondent had anything to do with the educational qualification of the respondent. He had nothing to gain nor lose by the aforesaid incorrect information given in the affidavit. He submits that the election petitioner and his agent were examined as witnesses. But not a single electorate was examined to show that the educational qualification of the petitioner had any impact on the result of the election. Accordingly, he submits that mistake or wrong furnishing of educational qualification in the affidavit is not of a substantial character and hence, acceptance of the nomination of the respondent was not a case of improper acceptance. He submits that when an election of a returned candidate is challenged before the Hon'ble High Court, Hon'ble High Court has to decide the case by taking into consideration the entire facts and circumstances emerging before the Court. He, accordingly, submits that if the entire facts and circumstances as emerged in the present case are considered, no case has been made out by the election petitioner for declaring the election of the respondent as void.

56. He submits that each and every wrong information furnished in the affidavit will not entail rejection of the nomination paper. It is only when such defect is found to be a substantial or material lapse that the returning officer could reject the nomination paper. In this regard, he has relied on the decion of the Hon'ble Supreme Court in Shambhu Prasad Sharma Vs. Charandas Mahant, (2012) 11 SCC 390 wherein it was held that the form of the nomination papers is not sacrosanct. What is to be seen is whether there is substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper. He further draws attention of this Court to decision of the Hon'ble Supreme Court in Kisan Shankar Kathore (supra), in which the Hon'ble Supreme Court in para 38 therein took the view that some of the non disclosures or disclosures in the affidavit were considered not to be serious lapse and the Hon'ble Supreme Court held that such lapses which are not serious in nature cannot be taken into consideration for declaring election void under Section 100(1)(d)(i) and (iv). The Hon'ble Supreme Court further clarified in para 38 that whether a defect is a serious material lapse or not, would depend on the facts and circumstances of each case. Therefore, he contends that each and every lapse will not constitute a ground for rejection of nomination. Each and every lapse has to be examined in the context of the facts and circumstances whether to treat the said as a material lapse or not. He submits that in the said case only non-disclosure of bungalow in the name of the returned candidate's wife and vehicle in the name of returned candidate's wife were considered to be serious and major lapses to invite voidation of the election of the returned candidate.

57. Learned senior counsel submits that every wrong information or failure to furnish information by a candidate will not attract provisions of Section 125A of the Act. It is only such information which the candidate has reason to believe to be false or concealment of any self-information which was done with the intent to be elected in the election. Therefore, the information so furnished which has no direct bearing with the intent to be elected nor which did not lead to any influencing of the voters, such information cannot be deemed to be a material information and hence, it cannot be clothed with the attribute of substantial character. In the present case it had been submitted that the furnishing of information as regards the educational qualification was as per requirements of the rules but it had not been proved by the election petitioner that the said information was given with the intent to be elected in the election. Accordingly, the wrong information given in the affidavit cannot be said to be of a substantial character.

Learned Senior counsel submits that it cannot be said that the respondent had filed falsely in respect of the highest educational qualification. It could be at best said that the respondent in giving his highest educational qualification has committed an error but he has offered the explanation both in pleading and by way of evidence led before this Court which deserves to be accepted by this Court. This is so in the context of total absence of any gain the respondent would have stood to derive by giving his highest educational qualification as "MBA, 2004, Mysore University" instead of a Post Graduate Diploma from an Institute in Chandigarh, which is also relevant.

58. Mr. Kumarjit, Learned Senior counsel appearing for the petitioner, however, submits that furnishing of the information as regards the educational qualification by the respondent if it is found to be not correct would mean that the respondent had not furnished any information at all. He submits that if the information is found to be incorrect it would be no affidavit at all as filing of such affidavit with false information will render the requirement of filing of an affidavit a mandatory information in terms of the direction issued by the ECI as well as the requirement of Rule 4A nugatory rendering such nomination paper to suffer from defect of substantial character and as such, the nomination paper is liable to be rejected.

59. As regards the contention of the respondent that in terms of provision of Section 100(1)(d)(i) it has to be proved that the result of the returned candidate has been materially affected by the improper acceptance of the nomination of the respondent, it has been submitted that in the present case, the same is not required. He submits

relying on the decision of the Hon'ble Supreme Court in Durai Muthuswami Vs. N. Nachiappan & Ors, (1973) 2 SCC 45 in which the Hon'ble Supreme Court held that where it is a case of only one seat to be filled and there are only two candidates and if the nomination paper of the returned candidate is found to be invalid, there is no further need to prove that the result of the election of the returned candidate had been materially affected, in which event the only option left before the Court is to declare the other candidate with valid nomination paper to be elected. He submits that the question whether the result of the election of the candidate is materially affected by the improper acceptance of a candidate would arise only when there are more than two candidates in an election. However, in the present case, it is not so as only the petitioner and the respondent had contested the election and in the event the respondent's nomination paper is found to be liable to be rejected, the petitioner is to be declared elected. He submits that this has been so held by the Hon'ble Supreme Court in Kisan Shankar Kathore (supra).

60. Accordingly, Mr. Kumarjit, learned Senior counsel submits that when there is no need to prove that the election of the respondent has been materially affected by the improper acceptance of the nomination of the respondent, non pleading on this aspect is not fatal as there is no need to plead so.

Mr. V.Giri, however, tried to distinguish the aforesaid judgment in Durai Muthuswami (supra) by contending that the said case related to the case where the elected returned candidate incurred disqualification under Section 9A of the Act. Thus, it comes under Section 100(1)(a) which does not require to plead or prove that the election hasbeen materially affected as in the case of Section 100(1)(d) of the Act.

61. Mr. Kumarjit, learned Senior counsel submits that from the evidence it is clear that the respondent has not denied specifically that he does not possess the MBA degree from Mysore University and since he has not denied this entry in the affidavit, it is clear that he had filed a false affidavit. He submits that it amounts to a substantial lapse, and hence, the nomination of the respondent was liable to be rejected. He submits that from the evidence on record it is clearly seen that he did not execute the affidavit submitted along with the nomination papers by taking oath before the Oath Commissioner or the competent authority and as such, the affidavit cannot be said to be a valid affidavit and hence on this ground also the nomination of the respondent was liable to be rejected.

62. From the rival contentions, the issue boils down to the finding as to whether filing of the affidavit by the respondent with the entry "MBA, 2004, Mysore University" amounts to filing of false affidavit and whether such defect is of substantial character which would entail rejection of the nomination paper of the respondent. If it is held that filing of such affidavit does not amount to a defect of substantial character there is no further need to proceed with the petition and the election petition will be liable to be dismissed. On the other hand, if it is found that filing of such affidavits by the respondent amounts to lapse of a substantial nature, it was incumbent on the returning officer not to have accepted the nomination of the respondent and if accepted, would be a case of improper acceptance of the nomination of the respondent.

While deciding this issue it may be necessary to examine the scope and parameters for deciding such issue by this Court. Whether the nomination paper is to be accepted or rejected at the time of scrutiny is plainly within the domain of the returning officer. The returning officer has to decide within the confines of Section 36 of the RP Act and relevant laws holding the field. This Court is called upon to examine whether the acceptance of the nomination paper by returning officer was proper or not. For doing this Court has to assume the role of the returning officer to decide whether to accept the nomination of the respondent or to reject it. This Court is of the view that while undertaking this exercise it may not be necessary to examine or take into consideration facts and circumstances which may arise after the scrutiny. The circumstances which may arise after the election may come into relevance only at the time of deciding whether the improper acceptance of the respondent ultimately materially affected the result of the returned candidate as provided under Section 100(1)(d) of the RP Act, 1951. Therefore, this Court is of the view that it may not be necessary to take into consideration facts and circumstances which are post scrutiny of the nomination paper as well as post election, which could be considered only at the second stage of the consideration required under Section 100(1)(b) i.e. as to whether such improper acceptance of the nomination had materially affected the result of the returned candidate.

The contention of Sri V.Giri, Ld. Senior Counsel that whether by this information the electorates had been influenced or not needs to be taken into account, may not be correct in as much as the fundamental idea for requiring furnishing these information about character, assets and educational qualifications is to enable the voters to make their choice effectively and in the manner they want while casting their votes. These requirements, may not on their own, per se, prevent criminalisation and other ills of electoral politics but certainly make the voters aware to make their choice more meaningful. The reason for this requirement to furnish these information is the fundamental right of the electorate citizens under Art. 19(1)(a) to know the backgrounds of the candidates for an effective choice. Therefore, the issue whether this incorrect information about the educational qualification had indeed swayed the voters is really not relevant. Of course, what may be relevant is whether such suppression of fact or misleading or wrong information has the potential to influence votes. Whether it actually influenced or not is immaterial as this Court is to examine whether the acceptance of nomination by the Returning Officer was proper or improper and the Court is only undertaking the exercise by way of postponement of the exercise of adjudicating the acceptance or rejection

irrespective of the result of the election. The result of the election will become relevant only at the second stage of the exercise contemplated under Section 100(1)(d), whether such improper acceptance of nomination materially affected the result of the election of the returned candidate.

63. Thus positing in the place of the returning officer, this Court has to examine as to the factors to be considered and criteria to be adopted while deciding whether such a defect is of substantial character or not. In the present case, before we examine it, it may be first determined as to whether there was any defect at all. Only when it is found that there is a defect, the second consideration, whether such a defect is of substantial character or not, will arise. The election petitioner has claimed that the respondent had falsely stated his educational qualification as "MBA, 2004, Mysore University" which the election petitioner contends to be a false statement. The respondent, however, has not categorically denied the averment of the election petitioner about the factum of the aforesaid entry about the educational qualification in his Form 26 affidavit. He, however, claims that it was a clerical error and he assigned certain reasons for it which have been already mentioned above. The fact remains, as established in course of the trial, that the respondent did not possess MBA from Mysore University. He neither underwent MBA degree nor studied in Mysore University. What had been claimed by the respondent is that it was a clerical one. If the educational qualification of the respondent is "MBA, 2004, Mysore University" is held to be an error, the next question arise is whether it was a clerical error as claimed by the respondent. Clerical error as in the normal parlance would mean a mistake which may have crept in inadvertently and unintentionally, due to certain typographical or mechanical mistake. Such a clerical error, therefore, would be a mistake which was unintended, but purely due to inadvertence which could be corrected without making any fundamental changes in the instrument or the document. "Clericalerror" has been defined in Black's Law Dictionary, 10th Edition as

> "An error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; esp., a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading. Among the numberless possible examples of clerical errors are omitting an appendix from a document; typing an incorrect number; mis-transcribing or omitting an obviously needed word; and failing to log a call. A court can correct a clerical error in the record at any time, even after judgment has been entered."

This expression has been also interpreted by the Hon'ble Supreme Court in Sooraj Devi Vs. Pyare Lal, (1981) 1 SCC 500 as follows :

> "**4.** ……A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa[2].
>
> [2]AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360"

The question, therefore, which arises in this particular case is whether the aforesaid entry regarding educational qualification can be deemed to be clerical error or not. In his written statement, the respondent claimed that the said entry was made as a result of "thought process" on the ground that it was discussed amongst friends that it is nowadays desirable to have MBA degree from Mysore University. In other words, it was claimed to be reflection of the thought process of the respondent. However, though he had pleaded in his written statement, this explanation has not come out clearly, cogently and unambiguously in the testimonies of his witnesses. The respondent in his evidence before the Court during the cross examination claims that he does not remember what had been instructed to his agents or the lawyer who filled up the form. The respondent claims that he did not fill up the form in his own handwriting but it was filled up by the lawyer on his behalf. However, in his statement he does not remember whether the entry was made in his affidavit by his counsel or not or by himself. He also claims to have no remembrance as to the mentioning of the highest educational qualification at the time of filing of nomination paper in the affidavit. In the election petition, it is the onus of the petitioner to prove his case and as a corollary to prove all material facts which are pleaded in the election petition failing which the petition would be liable to be dismissed, as not proved. However, in the present case, the election petitioner has specifically pleaded that the respondent had put his educational qualification in the affidavit as "MBA, 2004, Mysore University". The respondent has not specifically denied that he has not put "MBA, 2004, Mysore University" in his affidavit but he has merely stated that the said mistake was a clerical one. Admittedly, the aforesaid qualification written in his affidavit is not correct. In that event, the onus shifts to the respondent to prove that such a mistake was a clerical mistake, hence, a genuine and not intentional. However, the respondent had not been able to discharge this onus to show that it was a clerical mistake. The respondent (DW 1) in his testimony had stated that his nomination papers and enclosed affidavits were prepared and filled up by his counsel (DW 3) on the instructions of his agent (DW 2). However, his agent DW 2 states in his testimony that though the respondent had given him the details of the educational qualification in writing with necessary copies of testimonies, these were lost enroute to the chamber of his lawyer, DW 3, because of which his agent DW 2 who was under impression that the Respondent (DW 1) had passed MBA from Mysore University instructed the lawyer (DW 3) to fill up the particular column no. 9 in the affidavit. His agent DW 2 further

states that later, the Respondent put his signature on the affidavit before the Oath Commissioner without seeing the contents of the affidavit. Assuming this narration by his agent DW 2 to be correct, yet it cannot detract from the fact that, even the information or assumption of the agent DW 2 that the respondent had done MBA from Mysore University was mistaken, yet that information was consciously relayed on to the lawyer DW 3 as the correct educational qualification of the Respondent (DW1) while filling up the affidavit. Since, giving particulars in an affidavit for the purpose of nomination in an election is a solemn and serious business, the agent DW 2 ought to have reconfirmed about the educational qualification of the Respondent (DW 1) at the time of filling up or at least before it was signed and executed by the DW 1 from the respondent, which does not seem to have been done. Therefore, this Court is of the view that the qualities and attributes which would make an error "clerical" seem to be missing in the present case. Giving wrong information about the educational qualification by the Election Agent (DW 2) to the lawyer (DW 3) at the time of filling up the affidavit by DW 3 can not be construed to be a clerical error. It clearly amounts to a negligent act on the part of the DW 2 who is the election agent of the DW1. In any event, even if it is clerical error, till it is not rectified remains an error. That apart, the deponent of an affidavit shall be responsible for the entry made in or the contents of the affidavit. It was the responsibility of the respondent to have checked the contents before executing the same.

64. The Hon'ble Supreme Court while dealing with the issue of a defect which was held to be a technical one and not of substantial character, in Harikrishna Lal Vs. Babu Lal Marandi, (2003) 8 SCC 613, referred to the maxim "falsa demonstratio non nocet, cum de corpore constat" to show that if part of a description of an instrument is correct, and which correct part describes the subject with sufficient legal clarity, the untrue part will not vitiate the instrument as held in para 13 thereof which is reproduced hereinbelow:

> **"13.** A reference may usefully be made to the maxim "falsa demonstratio non nocet, cum de corpore constat" which means mere false description does not vitiate, if there be sufficient certainty as to the object. "Falsa demonstratio" means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the device; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is true, applies to one only. (See Broom's Legal Maxims, 10th Edn., pp. 426-27th .) Broom quotes (at p. 438) an example that an error in the proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the Will what person was intended to be benefited thereby."
>
> Applying the aforesaid maxim and principle, we may try to examine if any part of the description of his educational qualification in the affidavit would describe his educational qualification with sufficient clarity. Unfortunately, none of the parts, viz., "MBA" or "Mysore University", (the year "2004" being relevant only with reference to either the degree or the University) is true nor has any nexus or indication towards his real and admitted educational qualification that he did his graduation from Kirori Mal College, Delhi University or that he did PG Programme in Service Industry Management from Chandigarh. If he had merely written "MBA" without the other words "Mysore University" and claimed that he had mentioned MBA under the bonafide impression that PG Programme in Service Industry Management is equivalent to "MBA", the matter could have been otherwise. Also, if he had mentioned in the affidavit about his graduation from Kirori Mal College, Post-graduate Programme in Service Industry Management, along with the present entry, the matter could have otherwise also, as it would have indicated with sufficient clarity his educational qualification. In the present case, the evidence is on record that he neither underwent "MBA" course nor studied in Mysore University at any point of time. Both the entries are incorrect. In other words, the entire entry is incorrect.
>
> Hence, this Court finds it difficult to accept the plea of the respondent that the said defect is a "clerical error".

65. This takes us to the next stage of consideration. Even if the educational qualification mentioned by the respondent in his affidavit is held to be not a clerical mistake, yet it needs to be decided as to whether such a mistake is of substantial character. It is only when such defect or mistake is found to be of substantial character that the Returning Officer is under legal obligation to reject the nomination and not otherwise, vide Section 36(4) of the RP Act.

The election petitioner contends that it is a defect of substantial character which the respondent contends to the contrary.

As already discussed above, it is the contention of the petitioner that this information regarding educational qualification is required to be given in terms of the decision of the Hon'ble Supreme Court in Union of India Vs. Association for Democratic Reforms and Another (supra) and reiterated in PUCL case (supra) in which it has been observed that suppression or non furnishing of information would make the defect substantial in nature. He submits that as per instructions issued by the Election Commission of India in 2002 as well as the decision in Resurgence India (supra) it has been stated that non furnishing of the affidavit by the candidate or furnishing of

any wrong or incomplete information or suppression of any material information will result in rejection of nomination paper.

On the other hand, the respondent's plea is that requirement of putting the educational qualification is not of such importance as in the case of information relating to criminal antecedents and assets. Hence, that mistake in giving correct educational qualifications cannot be considered to be of substantial nature to invite rejection of nomination. His plea is that requirement of giving information about educational qualification cannot be equated with the requirement of giving information regarding criminal antecedents and assets as these two sets of information rest at a higher pedestal requiring a higher standard of scrutiny. In case of educational qualification, it has been pleaded that it must be subjected to lesser rigour at the time of scrutiny. It has been submitted that it deserves more leniency in scrutiny. Stringent standards ought not apply as in the case of criminal antecedents and assets. The requirements of furnishing information about criminal antecedents and assets are admittedly for serving an important public interest of cleansing the politics of criminal elements and to prevent misuse of money and corruption. However, information relating to educational qualification has nothing to do with any of the electoral evils plaguing the Indian political system as even an illiterate can stand for election and can hold public offices. Mr. Giri, Ld. Senior Counsel has strenuously argued that information relating to educational qualification has not been really considered critical and crucial as in the case of educational qualification by the Courts as well in the statutes.

The arguments advanced by Sri V. Giri, Ld. Senior Counsel is quite attractive and the plea of the respondent that wrong information about educational qualification is not of a substantial nature as to invite rejection of nomination could have been upheld but for the decision in PUCL Vs. Union of India, (2003) 4 SCC 399. In fact the very persuasive argument advanced by Sri V.Giri, Ld. Senior Counsel finds echo in the view expressed by Hon'ble P.Venkatarama Reddi J. as regards the not so important aspect of the educational qualification of the candidate, which however, did not find favour with the majority in the said case.

The Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra) had issued directions to the Election Commission to call for information by way of affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the criminal antecedents, if any, assets and liabilities and also of the educational qualification of the candidate. Pursuant to the aforesaid directive, the Election Commission issued directions under its Order dated 28.06.2002 which also contains the stipulation that furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of the nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequence under the Indian Penal Code for furnishing wrong information. The Hon'ble Supreme Court, however, clarified in PUCL case that the rejection of the nomination paper for furnishing wrong information or concealing material information at the time of scrutiny by a summary enquiry will not be permissible as in many cases, the candidate may not be able to furnish clinching proof or evidences at that stage, but only at a later stage. However, the basis for rejection, viz., wrong, incomplete information or lack of information, was not interfered with and the Hon'ble Supreme Court reiterated the earlier directions issued in the Association for Democratic Reforms (supra). In the said decision in PUCL, Hon'ble Venkatarama Reddi J., in a slight departure from the view of Hon'ble M.B.Shah J., expressed the opinion that disclosure of information regarding educational qualifications of a candidate is not an essential component of the right to information flowing from Article 19(1)(a). Hon'ble P.Venkatarama Reddi J. took the view that such information is not a vital and useful piece of information to the voters, in the ultimate analysis. If the aforesaid view of Hon'ble Venkatarama Reddi J. had prevailed, which also was canvassed by Sri V.Giri Ld. Senior Counsel for the respondent, it could always be claimed that information regarding educational qualification not being a vital or essential component of Article 19(1)(a), any such defect in such information, as a corollary, would not be a defect of a substantial character. However, it is not to be so. Hon'ble Dharmadhikari J, in his third opinion disagreed with the aforesaid view of the Hon'ble P. Venkatarama Reddi J. as clearly mentioned in para no. 132 of the judgment in PUCL. In that view of the matter, it cannot be held that information regarding educational qualification is not a vital component of right to information of the voter under Article 19(1)(a). If it is a vital component, which requires to be disclosed, such a defect in not correctly disclosing the educational qualification cannot be said to be of not substantial nature.

In the present case, the information furnished has been established to be incorrect, not even partially, even by applying the maxim ""falsa demonstratio non nocet, cum de corpore constat ". Thus, this Court is not persuaded to accept the plea of the respondent that it was a clerical error. The clear inference that can be drawn is that the respondent by furnishing information which is wholly incorrect has not furnished any substantive information as regards his educational qualification. The entire entry is incorrect. It does not in any way indicate the correct educational qualification of the respondent except that he is not illiterate. The information furnished by him is no information in the eye of law which is not different, in practical terms, from leaving the column blank, which would entail rejection of the nomination in terms of the decision in Resurgence India (supra). The direction of the Hon'ble

Supreme Court for furnishing information regarding educational qualification which has been held to be a vital component of Article 19(1)(a) has not been substantially complied with by the respondent rendering such defect, a defect of substantial character. The entirely wrong information was no information at all as far as the voter is concerned. Whether it was unintentional or due to inadvertence would not matter so long as the said incorrect entry remains. Though it has not been proved that it actually swayed the votes in his favour, the fact that it had the potential to do so cannot be wholly ignored. Therefore, this Court would hold that the defect in furnishing information of the educational qualification by the respondent is substantial in nature. In that event, the nomination of the respondent was liable to be rejected. Since, it was not rejected though it was liable to be rejected, it is a case of improper acceptance.

Reliance by Sri V.Giri, Learned Senior Counsel on the decision of Shambhu Prasad Sharma (supra) is also misplaced. The Hon'ble Supreme Court in that case was dealing with defect in the format and not a case of concealment of information of outstanding liabilities as observed in paragraph no. 19 of the said judgment, which is reproduced herein below.

> "19. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the Government. Now a departure from the format may assume some importance if the appellant alleged that there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the Government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the Returning Officer."

Hence, the factual situation being different, the aforesaid decision will not be applicable in the present case.

In view of the above, Issue no. (iii) as to whether the respondent had filed false affidavit in respect of the highest education qualification in the form, in which the respondent had mentioned "MBA Mysore University" is decided in favour of the petitioner and against the respondent and the issue whether it was merely a clerical error is decided against the respondent.

And Issue no. (i) as to whether the Returning Officer of the 27th Moirang AC had illegally accepted the nomination paper of the respondent is decided in favour of the petitioner and against the respondent.

66. This leads us to the next stage of consideration. If the nomination has been improperly accepted, what is the legal consequence? Section 100(1)(d) mandates that, in such an event, if it materially affects the result of the election, in so far as it concerns the returned candidate, the election of the returned candidate is to be declared void.

67. There has been much debate as to the meaning and scope of the expression "materially affected".

Suffice to say that it is a mandatory requirement, this condition must be also fulfilled before the election of the returned candidate can be declared void.

In the present case, there is only one assembly seat and two candidates to deal with. Thus, in the event, the nomination of the returned candidate is found to be improperly accepted on the ground that it ought to have been rejected or is liable to be rejected, the legal consequence as far as the returned candidate is concerned is that he could not have contested the elections. In which event, he would be presumed to have obtained no votes at all. In such a case, the question of considering whether the improper acceptance of the returned candidate materially affected the result of the returned candidate does not arise as it already stood materially affected the moment his nomination is rejected or held to have been improperly accepted. Since, by virtue of the finding that the nomination of the returned candidate was improperly accepted, he cannot be reckoned with other candidates with valid nominations. He will remain out of the contest. He could not have contested. His successful contest will not be counted. Hence, when the aforesaid mandatory statutory requirement, i.e., whether such improper acceptance materially affected the result of the returned candidate is applied, the effect would be that it would be applying to a candidate who has been already debarred from contesting and who will be deemed to be not entitled to contest the election. By virtue of being debarred from contesting due to rejection of nomination of the returned candidate, his result stands materially affected. The end result and legal effect of such improper acceptance of the nomination of the returned candidate is the same. As the returned candidate whose nomination is found to be improperly accepted will be deemed to be out of electoral contest, it matters little, even if the petitioner has not really pleaded that by improper acceptance of the nomination of the respondent, the result of the election of the respondent has been materially affected. There is no need for any proof of this requirement at this stage as the returned candidate stands automatically eliminated from the electoral fray. If no such proof is required, absence of such pleading to prove such a self evident fact hardly matters.

One may look this aspect from another perspective. If the very basis of the election of the returned candidate, i.e., the nomination of the candidate which is stated to be valid, is later on found to be not valid, as in the present case, the very basis and foundation for sustaining the election of the returned candidate goes. In other words, once the foundation is taken away, the election will have no basis to stand and thus will be rendered otiose. He cannot be treated to have been elected at all. Hence, the moment there is a finding that the nomination of the returned candidate has been improperly accepted, it immediately materially affects the result of the returned candidate. Accordingly, if there be any burden on the petitioner to prove that the result of the election of the returned candidate has been materially affected by improper acceptance of the nomination of the returned candidate, such a burden also gets discharged immediately. Thus, there will not be any need to prove further on the part of the petitioner that the improper acceptance of the nomination of the returned candidate has materially affected the result of the election of the returned candidate.

In this regard we may refer to the decision of the Hon'ble Supreme Court in Vashist Narain Sharma Vs. Dev Chandra and Others, (1955) 1 SCR 509, in which the Hon'ble Court also contemplated a situation where the person whose nomination has been improperly accepted is the returned candidate himself, as mentioned in para no. 9 thereof as follows :

"**9.** The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:

(1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes,

(2) where the person referred to above secured more votes, and (3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow the election to stand."

In the said case, the Hon'ble Supreme Court was dealing with Section 100 as it stood then in which in both the cases of improper acceptance and improper rejection of nomination, it was required to show that it materially affected the election as mentioned in para no.4 thereof as follows:

"4. ..... Section 100 gives the grounds for declaring an election to be void. The material portion is as follows:

"(1) If the Tribunal is of opinion— (a)-(b) * * *

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void. It is under this sub-section that the election was sought to be set aside."

5. Before an election can be declared to be wholly void under Section 100(1)(c), the Tribunal must find that "the result of the election has been materially affected." These words have been the subject of much controversy before the Election Tribunals and it is agreed that the opinions expressed have not always been uniform or consistent. These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate……."

Further, in Durai Muthuswami Vs. N. Nachiappan, (1973) 2 SCC 45, this aspect was also considered where the Supreme Court also dealt with a situation where one seat was to be filled and there were only two contestants. In the said case, the Hon'ble Supreme Court held that,

"3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1) (a), insofar as it is necessary for the purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act ….

(b)-(c) * * *

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii)-(iii) * * *

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the materiel facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted."

68. In the light of the aforesaid two decisions of the Hon'ble Supreme Court, even though it is a statutory requirement that in the event of improper acceptance of nomination paper, the election petitioner has still to show that it materially affected the result of the returned candidate, in case of only two contesting candidates, if the nomination of the returned candidate has been found to be improperly accepted, the material effect it has on the result on the returned candidate is self evident, and hence, need not be proved separately. The objection by Sri V. Giri, Learned Senior Counsel for the respondent that in the case of Durai Muthuswami (supra), the Hon'ble Supreme Court was dealing with Section 9A which disqualifies any candidate from contesting from the very beginning cannot be sustained as the Hon'ble Supreme Court also specifically dealt with this requirement in the light of Section 100(1)(d)(i) that such improper acceptance of nomination materially affected the result of the returned candidate.

The decision in Shambhu Prasad Sharma (supra) relied upon by Sri V. Giri, Ld. Senior Counsel was decided in a different context. The election of the returned candidate was challenged on the ground of suppression of facts relating to the assets of the second wife of the returned candidate by invoking the provisions of Section 100(1)(d)(iv) of the Act. Section 100(1)(d)(i) relating to improper acceptance of the nomination of the returned candidate was not involved nor was an issue in the said case. Finding against the returned candidate under sub-clause (iv) of clause (d) of sub section 1 of Section 100 does not automatically oust the returned candidate from the electoral fray as in the case of a returned candidate whose nomination will be deemed to be rejected because of improper acceptance. If Section 100(1)(d)(i) had been also involved in the said case, the matter would have been otherwise. Though sub-clauses (i) and (iv) are placed under the same clause (d) under Section 100(1), when it concerns the returned candidate, operation of law seems to be different as discussed above. Once it is proved that the acceptance of the nomination of the returned candidate was improper, he is deemed to have been eliminated from the first round of the contest itself, viz., scrutiny stage. Hence, his participating in the second round does not arise, where the Court is to consider whether the improper nomination of a candidate will materially affect the election of the returned candidate. When the returned candidate is not more in the fray having been eliminated by virtue of finding of improper acceptance of nomination, nay, rejection which was merely "deferred", in the expression of the Hon'ble Supreme Court in paragraph no. 43 in Kishan Shankar Kathore's case (supra), the question of examining whether such improper acceptance has materially affected the election of the returned candidate does not arise. Therefore, this Court is of the view that the said decision in Shambhu Prasad Sharma (supra) will not be applicable in the present case.

Similarly, in Mangani Lal Mandal (supra) relied upon by Sri V. Giri, Learned Senior Counsel for respondent, the Hon'ble Supreme Court was dealing with a case where the challenge was based on Section 100(1)(d)(iv) and the issue of improper acceptance of nomination under Section 100(1)(d)(i) was not involved. Hence, for the same reasons as discussed above, this decision will be of no avail to the respondent.

As regards the decision in Surendra Nath Khosla (supra) relied upon by Sri V. Giri, Learned Senior Counsel, the matter relates to improper rejection of nomination of a candidate. As the principle governing improper rejection of nomination of a candidate stands on a different footing, the said judgment will also not be applicable.

Accordingly, the Issue No. (ii) as to whether the election of the respondent had been materially affected by the acceptance of the nomination paper of the respondent by the R.O. of 27th - Moirang A/C is decided in favour of the petitioner and against the respondent.

69. In view of the findings recorded in respect of the Issues No. (i), (ii), (iii), (iv) and (v), the obvious conclusion is that the respondent is to suffer the legal consequence under Section 100(1)(d)(i) for having not given the correct information about his educational qualification in his affidavit in Form 26 at the time of filing nomination paper, which had been held to be a defect of substantial character, and hence would be covered by the decision of the Hon'ble Supreme Court in Kisan Shankar Kathore (supra). The submission of Sri V. Giri, Ld. Senior Counsel for the respondent that the said decision was rendered in the context of misinformation regarding the assets and not about educational qualifications will not make any difference as it is the similar issue of wrong/incomplete information in the affidavit of a material fact.

The contention of Mr. V. Giri that the Hon'ble Supreme Court had not really decided on the issue which itself framed para 36.2 of the judgment as to whether non-disclosure of the information has materially affected the result of the election, is really not material in view of the fact that in the present case we are dealing with only two candidates and out of which one, the respondent and returned candidate, has been found to be not entitled to contest the election for the reasons discussed above. The Bombay High Court had considered this aspect of which the Hon'ble Supreme Court took note as evident from paragraph no. 32 of the judgment which is reproduced herein below:

"32. Issue 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid information. The High Court took note of the provisions of Sections 100(1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

"137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of

free and fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that constituency. As the candidate has to disclose this information on affidavit, the solemnity of the affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation."

70. The respondent has to suffer this consequence not because he has indulged in any corrupt practice or that such information had influenced the voters. In fact, it has not been proved that he had indulged in any corrupt practice or that because of this wrong information he had gained any undue advantage during the elections. This error in giving information of educational qualification cannot be considered in the same degree of culpability for giving wrong information about the character and assets of the candidates as pleaded by the respondent. But the fact remains that information regarding educational qualification is a very vital piece of information from the perspective the voter as reiterated by the Hon'ble Supreme Court, failure to furnish which would amount to be a material lapse. Of course, it has not been also proved that he had deliberately gave this wrong information to gain any undue advantage. At most it can be said to be negligence on the part of the respondent. Yet, the consequence of furnishing substantially wrong information about educational qualification, which the Hon'ble Supreme Court has held to be a vital piece of information cannot be avoided, as the law mandates that for such lapses of substantial character at the time of filing nomination would entail rejection of nomination. Since the information furnished by the respondent as regards the educational qualification has been found to be wholly incorrect, it has to be considered as a defect of substantial character. Hence, the nomination of the respondent suffered from a defect of substantial character.

71. In the result, for the reasons discussed above, the election of the respondent is declared void under Section 100(1)(d)(i) of the Representation of People Act, 1951.

72. Having declared the election of the respondent as void, the natural consequence in the present case would have been to declare the only other remaining candidate with valid nomination in the election for the 27th Moirang Assembly Constituency, to be elected, by default, in terms of Section 53(2) of the Representation of People Act, 1951. However, this is not be so.

73. The election petitioner had submitted his nomination as a candidate of the Nationalist Congress Party (NCP) Manipur State for contesting the election in the 27th Moirang Assembly Constituency in the last election to the 10th Legislative Assembly held on 28.01.2012 in which the respondent was declared elected. However, after filing the present election petition on 18.04.2012, the petitioner resigned from the Nationalist Congress Party (NCP) and joined the Bharatiya Janata Party (BJP), Manipur. When he appeared as a witness as PW 1 and when asked by the Court as to whether he still remains a member of the NCP, he candidly stated before this Court that he is no longer a member of the NCP. When asked by the Court as to whether he had resigned from the NCP, he answered that he had tendered resignation from the NCP in the later part of 2013. Further, to the query of the Court as to whether he is a member of any other political party, he replied that he joined the BJP in the concluding part of 2013 and he has been a member of the BJP since then. Therefore, in his testimony before this Court he clearly stated that he had resigned from the NCP in 2013 and joined the BJP in 2013 and he continues to remain a member of the BJP. After the recording of evidence of the witnesses on the part of the petitioner was concluded on 28.01.2016, the matter was fixed for examination of the witnesses of the respondent on 01.02.2016 on which date, the learned Senior Counsel for the petitioner submitted that he had filed two (2) Misc. applications, one with the prayer to place on record a video recording of the scrutiny of nomination paper for the General Election of 2012 for the purpose of confronting the witnesses during cross-examination and another application seeking amendment of the election petition. Accordingly, these applications were directed to be listed on 8.02.2016 for consideration. The application which was registered as MC (EP) No. 2 of 2016 sought for amendment of the election petition by inserting new paragraphs to bring on record that during the pendency of the election petition, the election petitioner was expelled from the NCP by an order dated 23.12.2013 issued by the President, NCP, Manipur State on the ground that he failed to submit explanation on the show cause notice. It is stated that that in response to the said order, the petitioner submitted a representation dated 21.12.2013 to the President, NCP, Manipur State praying for cancellation/ vacation of the expulsion order, but the matter was kept pending without any reply. It has been also stated that the petitioner submitted an enrolment application to the BJP, Manipur State during the year 2015 which, however, was rejected and turned down by the BJP, Manipur State vide order dated 18.01.2016. It has been further stated that the NCP, Manipur State considered the representation dated 21.12.2013 of the petitioner and issued an order only on 21.01.2016 to the effect that the earlier order dated 13.12.2013 regarding expulsion of P. Saratchandra Singh (the petitioner) from the NCP stands revoked and his membership of the NCP was restored with immediate effect. This application was objected to by the respondent on the ground that the same has been filed to rectify his statement made before this Court and such proposed amendment will cause prejudice to the respondent. When the matter was taken up on 8.02.2016, the said applications were not moved and the respondent was examined as DW 1 and cross examined. As the cross examination of DW 1 could not be concluded the matter was further deferred to 16.02.2016.

Thereafter, recording of evidence on the part of the respondent was concluded on 19.02.2016 on which date counsel for both the parties prayed that hearing/final argument may be fixed on 22.02.2016. Accordingly, the parties were heard on 22.02.2016, 23.02.2016, 24.02.2016 and 25.02.2016 when the arguments from both the sides were concluded. At the time of conclusion of the argument, learned counsel for both the parties submitted that all the Misc. applications pending before this Court may be disposed of on the basis of the existing materials and submissions made. Therefore, the evidence on record remains that the petitioner had resigned from the NCP in the later part of 2013 and joined BJP and he continues to be a member of the BJP since then. The aforesaid application filed by the election petitioner to show that he has now been readmitted to NCP has been pooh-poohed by the respondent contending that it was a desperate attempt by the petitioner as an afterthought to change his version regarding his status of the membership of the political party at present. Since the respondent had categorically objected to this application, the question of considering the proposed amendment and also considering documents annexed thereto will not be permissible at this stage, for allowing amendment of the election petition at this stage after conclusion of the hearing will not only delay the whole proceeding but also entail further recording of evidence for proving the documents annexed thereto inasmuch as none of the documents sought to be relied are certified copies of public documents and these are all private documents which would require to be proved unless admitted by the other party. It may be also noted that there is substantial variation on the nature of relinquishment of membership of the NCP. In the documents sought to be relied upon by the petitioner it has been mentioned that the petitioner had been earlier expelled from the NCP whereas in the testimony of the petitioner before the Court he had stated that he had resigned from the NCP. Expulsion and resignation are two altogether different method of cessation of membership of a party. Be that as it may, this Court is not considering these documents for the reasons stated. Further, there is already a direction from the Hon'ble Supreme Court to conclude the trial by the end of February, 2016. Therefore, this Court is not inclined to consider the documents filed along with the application for amendment of the election petition. Accordingly, this Court would hold, on the basis of the evidence on record, that the election petitioner had voluntarily given up his membership from the NCP by resigning sometime in the later part of 2013 and joined the BJP in the concluding part of 2013 and he continues to be a member of the BJP. If that is so, a person who is no more in the NCP, which had nominated him to contest election cannot be declared elected as a NCP candidate. If the prayer of the petitioner for declaring him elected as a NCP candidate is to be allowed on the ground that the election of the respondent is void, it would effectively mean that the petitioner would be declared the elected candidate from the 27th Moirang Constituency as a candidate from the NCP which he cannot represent now as he had already resigned from the said party and is presently a member of the BJP Manipur State. Thus, if the petitioner is to be declared elected now, he would be elected as a member of the BJP, though he was nominated by the NCP as its candidate. Therefore, grant of such a relief would lead to an anomalous situation which would be against the spirit of law as expressed in Paragraph No. 2 of the 10th Schedule to the Constitution of India. Even through the aforesaid Paragraph No. 2 of the 10th Schedule to the Constitution of India may not be strictly applicable in the present case, the underlying principle behind it to prevent defection and to ensure political fidelity cannot be ignored at the time of considering this relief when the petitioner had voluntarily given up membership by resigning from a party (NCP) which had nominated him to contest the election. He will remain a member of BJP yet get elected as a NCP candidate if this relief claimed under Prayer (b) is granted. Such a situation is never contemplated under the law.

Accordingly, this Court declines to grant the relief claimed under Prayer (b) of the petition.

74. Accordingly, the petition is disposed of by granting the relief claimed under Prayer (a) and declining the relief under Prayer (b).

As regards Prayer (c) since this Court has already declared the election of the respondent as void, keeping into consideration the entire facts and circumstances of the case and also keeping in mind the Paragraph/Direction No. 29.7 of the Hon'ble Supreme Court in Resurgence India (supra), this Court is of the view that it may not be necessary to issue any direction for initiating any proceeding against the respondent under Section 125-A of the Representation of People Act, 1951, and in so far as charge under Section 127 of the Act is concerned, no case is made out for any direction.

Parties are to bear their own costs.

In the result, Issue No.(vi) as regards the reliefs which the petitioner is claiming, are accordingly answered.

75. All the pending miscellaneous applications stand disposed of accordingly in terms of this judgment and order.

76. A copy of this judgment be forwarded to the Election Commission of India for necessary action.

JUDGE

[No.82/MR-LA/2016]

FR/NFR

By Order,

STANDHOPE YUHLUNG, Principal Secy.

आदेश

नई दिल्ली, 8 दिसम्बर, 2016

आ. अ. 85.— यतः, भारत निर्वाचन आयोग का यह समाधान हो गया है कि असम राज्य की लोक सभा के साधारण निर्वाचन, 2014 में स्तंभ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से और स्तंभ 4 में विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951, तथा तद्धीन बनाए गए नियमों के अन्तर्गत यथाअपेक्षित उक्त सारणी के स्तम्भ 5 में अपने नाम के सामने यथादर्शित अपने निर्वाचन व्यय का लेखा दाखिल करने में विफल रहा है/रही है;

और यतः, उक्त अभ्यर्थियों ने निर्वाचन आयोग द्वारा सम्यक नोटिस दिए जाने के बावजूद उक्त विफलता के लिए या तो कोई कारण या स्पष्टीकरण नहीं दिया है, या उनके द्वारा दिए गए अभ्यावेदन, यदि कोई हों, पर विचार करने के उपरान्त निर्वाचन आयोग का यह समाधान हो गया है कि उक्त विफलता के लिए उनके पास कोई उपयुक्त या न्यायोचित कारण नहीं है;

अतः, अब उक्त अधिनियम की धारा 10क के अनुसरण में, निर्वाचन आयोग नीचे की सारणी के स्तंभ 4 में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन या राज्य या संघ राज्य-क्षेत्र की विधानसभा अथवा विधान परिषद के लिए सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से तीन वर्ष की अवधि के लिए एतद्वारा निरर्हित घोषित करता है:-

सारणी

क्र.सं.	निर्वाचन का विवरण	लोकसभा निर्वाचन क्षेत्र की क्रम सं. व नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम तथा पता	निरर्हता का कारण
(1)	(2)	(3)	(4)	(5)
1.	असम राज्य से लोकसभा के लिए साधारण निर्वाचन, 2014	07-गौहाटी संसदीय निर्वाचन क्षेत्र	श्री बेनेडिक्ट आलोक आरेंग, ग्राम-कीननगांव, डाकघर-कीननगांव, जिला-कामरूप, पिन-781123, असम	निर्वाचन व्यय का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में असफल रहे।
2.	असम राज्य से लोकसभा के लिए साधारण निर्वाचन,2014	07-गौहाटी संसदीय निर्वाचन क्षेत्र	श्री प्रांजल,बोरडोलोय, फ्लैट संख्या- ख, उर्वशी रिपेरियन अपार्टमेंट, हातीशिला, खारघुली, गौहाटी-4, असम	निर्वाचन व्यय का लेखा विधि द्वारा अपेक्षित रीति से दाखिल करने में असफल रहे।

[सं.76/असम-लो.स./2014]

आदेश से,

नरेन्द्र नाथ बुटोलिया,सचिव

ORDER

New Delhi, the 8th December, 2016

O. N. 85.—Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in column 4 of the Table below at the General Election to the Lok Sabha, 2014, in the Assam State held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either

House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order:

TABLE

SL. No.	Particulars of Election	No. & Name of Parliamentary Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
(1)	(2)	(3)	(4)	(5)
1.	General Election to the Lok Sabha 2014 from the state of Assam.	07-Gauhati PC	Shri Benedict Alok Areng, Vill.-Kinangaon, P.O. Kinangaon Distt. Kamrup, Pin-781123, Assam. .	Failed to lodge accounts of election expenses in the manner required by law.
2.	General Election to the Lok Sabha 2014 from the state of Assam.	07-Gauhati PC	Shri Pranjal Bordoloy, Flat No. Kha, Urvashi Riperean Apartment,Hatishila, Kharghuli, Ghy-4, Assam	Failed to lodge accounts of election expenses in the manner required by law.

[No.76/AS-HP/2014]
By Order,

NARENDRA NATH BUTOLIA, Secy.

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